# United States Court of Appeals for the Second Circuit



**APPENDIX** 

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 75-1027

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ANTHONY TAVOULARIS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

# APPELLANT'S APPENDIX



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### DOCKET ENTRIES

UNITED STATES

v.

ANTHONY TAVOULARIS, VINCENT POERIO, LOUIS DANIELS.

### PROCEEDINGS

- 3- 6-74 Before Mishler, Ch.J. Indictment filed and ordered sealed Bench warrant ordered as to deft. #3.
- 3-18-74 Before Travia, J. Case called sealed indictment ordered opened deft. Tavoularis & counsel Gustave Newman present deft. arraigned & waives reading of Indictment and enters a plea of not guilty bail continued and case adjd. to May 3, 1974 for status report.
- 4- 1-74 Petition for Writ of Habeas Corpus ad prosequendum filed (Poerio).
- 4- 1-74 By Travia, J. Writ issued, ret. 4-3-73 (Poerio).
- 4-19-74 Before Travia, J. case called deft. Poerio present without counsel deft. waives reading of Indictment and the court enters a plea of not guilty case adjd. to 4-24-74 at 4:00 P.M. for appointment of counsel.
- 4-24-74 By Travia, J. Order appointing counsel filed for deft. Poerio.
- 4-24-74 Before Travia, J. case called deft. Poerio present court assigns Martin Light as counsel for the deft. 30 days for motions is granted.

- 5- 3-74 Before Travia, J. case called respectfully referred to Judge Platt.
- 5- 7-74 Before Weinstein, J. Case called deft. and counsel Joanna Seybert of Legal Aid present Deft. arraigned and enters a plea of not guilty Bail set at \$10,000.00 P.S.B. secured by deft.'s signature, his mother's signature and mother's house. (Louis Daniels).
- 5-13-74 Magistrate's file 74 M 687 inserted into CR file.
- 6-14-74 Before Platt, J. Case called set for trial on Sept. 9, 1974.
- 6-19-74 Notice of Readiness for trial filed.
- 8-14-74 Complaint filed re deft. Joseph A. De Rienzo (prepared by Charles Weintraub, Special Atty., U.S. Dept. of Justice). (Placed in criminal file 74 CR 173 relates).
- 8-30-74 Petition for writ of habeas corpus ad prosequendum filed (Poerio).
- 8-30-74 By Platt, J. Writ issued, ret. 9-9-74 (Poerio).
- 9- 4-74 Before Platt, J. Writ issued, ret. 10-7-74 (V. Poerio).
- 9-20-74 Petitions for wrtis of habeas corpus ad prosequendum filed (V. Poerio).
- 9-20-74 By Platt, J. Writs issued, ret. 10-7-74 (V. Poerio).
- 9-20-74 Before Platt, J. Case called adjd. to 10-7-74 for trial.
- 10- 8-74 Writ returned and filed executed as to deft. V. Poerio.
- 10-10-74 Govt.'s Memorandum filed on divulging witness' addressed (sic) and employment.

- 10-22-74 Govt's. Trial Brief filed.
- 10-24-74 Before Plattn, J. Case called Defts. Anthony Tavoularis and V. Poerio and L. Daniels and counsels present. Trial ordered and begun Deft. Poerio's motion to dismiss denied Jurors selected and sworn Trial cont'd. to 10/25/74. WADE.
- 10-25-74 Before Platt, J. Case called trial resumed hearing held and concluded motion denied trial cont'd to Oct. 29, 1974.
- 10-29-74 Before Platt, J. Case called Defts. and counsel present Trial resumed. Each deft. moves for mistrial No opposition motion granted on consent. Trial concluded New trial set down for 11/15/74 jury discharged.
- 10-30-74 Stenographers Transcripts dated 10/29/74 and 10/24/74 filed.
- 11- 1-74 Govt's reply brief filed.
- 11- 4-74 Voucher for Expert Services filed (Poerio).
- 11- 4-74 Before Platt, J. Case called Trial ordered and begun Jurors selected and sworn Trial cont'd. to Nov. 6, 1974.
- 11- 6-74 Before Platt, J. Case called trial resumed trial cont'd. to 11/7/74.
- 11- 7-74 Before Platt, J. Case called trial resumed trial cont'd. to 11/11/74.
- 11- 8-74 Govt's. Request to Charge filed.
- 11-11-74 Before Platt, J. Case called defts. and counsels present trial resumed Deft. Tavoularis motion to dismiss and for a directed verdict Deft. Poerio motion for a directed verdict; deft. Daniels motion

for a directed verdict and to dismiss - motions denied - trial cont'd. to Nov. 12, 1974.

- 11-12-74 Before Platt, J. Case called defts. and counsel present trial resumed defts. renew all motions previously made motions denied trial cont'd. to 11/13/74.
- 11-13-74 Before Platt, J. Case called trial resumed court charges jury Requests to Charge Marshals sworn alternates discharged Jury retires to deliberate at 11:20 A.M. trial cont'd to 11-14-74.
- 11-13-74 By Platt, J. Order of sustenance filed (Luncheon).
- 11-14-74 Before Platt, J. Case called defts. and counsels present trial resumed jury resumes deliberations jury returns with a verdict of guilty as to all 3 defts. on each of counts 1 & 2 jury polled jury discharged trial concluded.
- 11-14-74 By Platt, J. 2 Orders of sustenance filed (Lunch and coffee).
- 11-14-74 Stenographers Transcript 10/25/74, 11/4/74, 11/6/74 and 11/11/74 filed. 4 stenographers transcripts filed, dated Nov. 7, Nov. 12, Nov. 13 and Nov. 14, respectively.
- 12- 5-74 Voucher for Expert Services filed (Daniels).
- 12- 5-74 Voucher for Expert Services filed (Daniels).
- 1-17-75 Before Platt, J. Case called Defts. and counsels present Tavoularis sentenced on count 1 to imprisonment for a period of 5 years pursuant to T-18, U.S.C., Sec. 4208(a)(2) and fined \$5,000.00 and imprisonment for a period of 5 years on count 2 pursuant to T-18, U.S.C., Sec. 4208(a)(2) and fined \$5,000.00 sentence of imprisonment on count 2 to be served concurrently with sentence of imprisonment under count 1 Deft. Daniels sentenced on count 1 to imprisonment for

a period of 3 years pursuant to T-18, U.S.C., Sec. 4208(a)(2) and imprisonment on count 2 for a period of 3 years pursuant to T-18, U.S.C., Sec. 4208(a)(2) said sentence to run concurrently with sentence of imprisonment in count 1.

- 1-17-75 Judgment and Commitment filed certified copies to Marshal (Daniels).
- 1-17-75 Judgment and Commitment filed certified copies to Marshal (Tavoularis).
- 1-17-75 Notice of Appeal filed (Tavoularis).
- 1-17-75 Docket entries and duplicate of notice of appeal mailed to court of appeals.
- 1-17-75 Notice of appeal filed (Daniels). (Without fee).
- 1-17-75 Docket entries and duplicate notice of appeal mailed to court of appeals.
- 1-24-75 Before Platt, J. Case called Deft. Poerio and counsel present deft. renews all motions previously made denied deft. sentenced to imprisonment on counts 1 and 2 for a period of 5 years pursuant to T-18, U.S.C., Sec. 4208(a)(2) sentences in count 1 and 2 to run concurrently and consecutive with sentence imposed in 71CR1269 Clerk to file notice of appeal.
- 1-24-75 Judgment and Commitment filed certified copies to Marshal (Poerio).
- 1-24-75 Notice of appeal without fee filed (Poerio).
- 1-24-75 Docket entries and duplicate of notice of appeal mailed to court of appeals.
- 1-24-75 Before Platt, J. Case called Motion to exonerate bail as to deft. Daniels motion granted bail

exonerated - deft. to surrender to the U.S. Marshal.

- 1-27-75 Certified copy of Judgment and Commitment ret'd. and filed deft. delivered to Federal Detention Head-quarters (Daniels).
- 1-30-74 Order received from the Court of Appeals filed that the Index to Record be docketed on or before Feb. 7, 1975 (defts. Daniels, Tavoularis and Poerio).
- 1-30-75 Record on appeal certified and handed to Joan Gill for delivery to Court of Appeals.

### INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA,

v.

74 Cr. 173

ANTHONY TAVOULARIS, VINCENT POERIO and LOUIS DANIELS,

Defendants.

THE GRAND JURY CHARGES:

# COUNT ONE

On or about and between the 14th day of October, 1969 and the 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels (and Joseph DeRienzo, Steward Norman and Melvin Berman, named herein as co-conspirators but not as defendants) and others to the Grand Jury unknown, wilfully and knowingly conspired and agreed to commit offenses against the United States in violation of Title 18, United States Code, Section 2113(c), by wilfully and knowingly conspiring and agreeing to possess, conceal, sell and dispose of United States Treasury bills, valued in excess of one hundred

dollars (\$100.00) including but not limited to a United States
Treasury bill in the face amount of One Hundred Thousand
Dollars (\$100,000) bearing serial number 1017965A which United
States Treasury bill had been taken and carried away, with
intent to steal and purloin from the Morgan Guaranty Trust
Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody,
control and management of the aforesaid Morgan Guaranty Trust
Company, the deposits of which bank were then and there insured
by the Federal Deposit Insurance Corporation, the defendant
Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels, knowing the aforesaid United States
Treasury bills had been taken from a bank, in violation of
Section 2113(b).

- 2. It was part of said conspiracy that the defendant Vincent Poerio and the defendant Louis Daniels would offer to sell Treasury bills valued in excess of two million dollars to co-conspirators Stewart Norman and Melvin Berman.
- 3. It was further a part of said conspiracy that coconspirators Stewart Norman and Melvin Berman would attempt to sell said Treasury bills to the defendant Anthony Tavoularis

and co-conspirator Joseph DeRienzo.

- 4. It was further a part of said conspiracy that the defendant Anthony Tavoularis and co-conspirator Joseph DeRienzo would attempt to find a buyer for said Treasury bills.
- 5. It was further a part of said conspiracy that the defendant Vincent Poerio would supply a sample Treasury bill to co-conspirator Stewart Norman.
- 6. It was further a part of said conspiracy that said sample Treasury bill would be passed from co-conspirator Stewart Norman through co-conspirator Melvin Berman to the defendant Anthony Tavoularis.
- 7. It was further a part of said conspiracy that the defendant Anthony Tavoularis would deliver said Treasury bill to co-conspirator Joseph DeRienzo.
- 8. It was further a part of said conspiracy that the defendant Vincent Poerio would deliver Treasury bills valued in excess of two million dollars to co-conspirator Stewart Norman.
- 9. It was further a part of said conspiracy that coconspirator Stewart Norman would deliver said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph

DeRienzo at Frank's Luncheonette, 1766 East New York Avenue, Brooklyn, New York.

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed the following:

# OVERT ACTS

- 1. On or about February 27, 1970, in the Eastern District of New York, Anthony Tavoularis and Joseph DeRienzo had a conversation.
- 2. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis and Joseph DeRienzo met at 1766 East New York Avenue, in Brooklyn.
- 3. On or about February 28, 1970, within the Eastern District of New York, Vincent Poerio and Stewart Norman had a meeting.
- 4. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis, Melvin Berman and Stewart Norman had a meeting.
- 5. On or about March 4, 1970, within the Eastern
  District of New York, Vincent Poerio and Newart Norman had
  a meeting.
  - 6. On or about March 4, 1970, within the Eastern

District of New York, Anthony Tavoularis, Stewart Norman and Joseph DeRienzo met at 1766 East New York Avenue, in Brooklyn.

(Title 18, United States Code, Section 371)

# COUNT TWO

On or about and between the 27th day of February, 1970 and the 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio and the defendant Louis Daniels, did wilfully, unlawfully and knowingly possess United States Treasury Bills, valued in excess of one hundred dollars (\$100.00), including but not limited to a United States Treasury bill in the face amount of One Hundred Thousand Dollars (\$100,000) bearing serial number 1017965A, which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody and control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis and the defendant

Vincent Poerio and the defendant Louis Daniels, knowing that the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113(b).

(Title 18, United States Code, Section 2113(c) & 2).

A TRUE BILL

FOREMAN

UNITED STATES ATTORNEY

# Opening-Dougherty

time they conspired to do these things they knew the nature of the Treasury bills. They knew that those Treasury bills had been removed from a bank and that that had been accomplished by a violation of another section of the United States Code, 2113.

I submit that you will hear evidence that during the month of October, 1969, some \$13,194,000 worth of Treasury bills disappeared from the Morgan Guarantee Trust Company. That part of those bills constituted one parcel of \$8 million worth that were sold to the Bank of Tokyo; that another part constituted a \$5 million batch of bills to be sold to the Toledo Trust Company; and \$194,000 were to be sold to the Bank of Commerce in Memphis, Tennessee.

You will hear testimony by way of official business records of the Morgan Guarantee Trust Company that the Treasury bills I intend to introduce in this case were received by the Morgan Guarantee personnel, was in their security incoming section and that they were marked for delivery or deposit through customers' accounts in the vault of the Morgan Trust and they never made it to that vault. And following the disappearance of these bills, steps were instituted to determine where the bills had disappeared.

Opening-Dougherty

At this point, I think I should allude to the testimony I expect you will hear from two other sources which become relevant at this point. First is that of Richard Jaeger who was and is in October of '69 a special agent for the United States Secret Service; and Mr. Stuart Norman who I already alluded to.

Agent Jaeger will testify about his first meeting with Joe DeRienzo, some two days prior to the event that occurred on March 4, 1970, which produced the arrest of the defendant Anthony Tavoularis and Mr. Stuart Norman and Mr. Joseph DeRienzo. He will tell you about a meeting he had in Manhattan on a Monday night and about a conversation he had with Mr. DeRienzo about the very things Mr. Tavoularis was talking to Mr. DeRienzo about, moving Treasury bills.

As a result of this meeting the Secret Service opened an investigation to determine whether the bills were genuine or counterfeit and where they came from, and instituted various measures, of surveillance, made suggestions to Joseph DeRienzo about how they could get the defendant Tavoularis to make the transfer in Manhattan instead of Brooklyn, and how after

here. So that we understand each other, I am talking now about Exhibits 1, 2, 3, 3B, 8A and B. They are all in evidence, Government exhibits.

Now, do I understand something, that these are records of your bank?

A That's correct.

Q And they are kept in the possession of your bank?

A Right.

Q Now, you personally didn't handle these transactions? You're testifying from these records; is that right,
sir?

A That's correct.

O Okay. Now, looking at these Treasury bills that are in evidence, 4, 4A, 6, 5, 5A, 5B, 7, 1A and 7B, I think you told us these Treasury notes you saw for the first time in Court? You have never seen them come into your bank?

A That's correct.

Now, sir, is there anything on here to indicate that these come from your bank, these Treasury notes?

A These? No.

Q These are like any other Treasury notes subject, of course, to the exhibit numbers on here and the word "void," et cetera, et cetera; is that right?

A That's right.

Q Now, if you would bear with me for a minute.

There's one exhibit here that you said had no serial number on it; is that right?

A Yes.

Q That was 8A, was it not, sir? And that's the transfer to the Bank of Tokyo?

A That's correct.

Now, sir, in your experience, your 44 years with the bank, were there situations where customes like the Bank of Tokyo or the Bank of Commerce or the Toledo Bank would pick up the securities themselves and keep them in their own facilities?

A I would say, no, but possible.

Q You mean those three institutions possibly would or all institutions generally?

A All institutions could.

Q And in all your 44 years, did any of them ever do that, pick up the securities themselves and hold it on their own premises?

A I would say that's -- you know, I can't recall any specific instance. I say it's possible, yes. Certainly nobody had come in from Toledo to pick up five million and go home with it.

# Connor - cross/Chrein

A That is correct.

Q And your bank pursued whatever auditing procedures that your bank would do in the case of a misplaced bill or a lost bill; is that a fair statement?

A That is correct.

Q Would I also be fair in stating that after your auding procedures did not disclose the location of the missing bills, the -- some agencies of the U. S. Government was contacted?

A That is correct.

Q Have you, sir, in the period between October of 1969, if you recall, and the period of February or March, 1970, come across any account of this disappearance in either the newspaper, television reports or radio broadcasts?

A Sure.

We published it.

Q Did you publicize it by circularizing the missing certificate numbers to other banks or other institutions?

A Yes, we did.

Was there a press release, if you know, sir?

A Yes, there was.

Q And there was publicity?

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A There was publicity. Both television and newspaper.

Q Were the serial numbers indicated on any newspaper accounts that you read?

A No. Not to my knowledge.

Q Was the -- were the serial numbers indicated in any radio broadcast or television broadcast that you have had indicated?

A Not to my knowledge.

Q Was the press exposure, if you recall, sir, one that took place over one day or over a large number of days?

A I can't recall whether there was more than one notice in the paper or what:

Q You had a special interest in this - would I be fair in stating that your interest in press accounts of this disappearance would have been greater than a person with no connection to the bank?

A I would say yes.

And do you have the recollection of being, shall we say saturated with news on radio, television and the press of this disappearance, of this misplacement?

A Not saturated.

Would I also be fair in stating that whatever

exposure this had in the media took place pretty close to the time of the theft and did not continue through November, December and January of 1970?

A Fair statement.

MR. CHREIN: Thank you.

I have no further questions.

### REDIRECT EXAMINATION

### BY MR. DOUGHERTY:

Mr. Connor, were there any business practices in use at the bank with regard to the direct pickup by customers of securities at the time in question, October of 1959?

A Business practices?

Q Yes.

MR. LIGHT: Your Honor, I would object as not being proper redirect.

THE COURT: No. Overruled.

A Well, in order for a customer to pick up his securities, first he would have to authorize us to pick up his securities, first he would have to authorize us to deliver them to him by letter or other means.

We would have to prepare the proper manifolds to withdraw the securities from his account, deliver them upon identification. Get a signature, have it verified.

XX

A Yes.

Q Also, it also is fair to say your initial investigation, or initial information as a result of information you received is that it sounded to you like a counterfeiting transaction?

A Yes.

Q As a matter of fact, you told that to the F.B.I., did you not?

A (No response.)

Q Well, I have you at a disadvantage. Take a look at Defendant's Exhibit A for identification, this is a 302 furnished to me by the Government. It is an F.B.I. report. See if that refreshes your recollection, sir.

A I don't know if I told — I don't know whose report this is. I don't know if I told him that specifically.

I probably told him at this time we didn't know what it was.

It could be.

It could be a counterfeiting transaction?

A That's right.

Now, sir, you broke of this surveillance, I think you said, approximately 45 minutes to an hour you followed the car?

A It wouldn't have been that long, Mr. Newman, it would have been I would think probably maybe 15 or 20

...

- A Yes, we did.
- Q Can you tell us in your own words what was said by Mr. Tavoularis and what yousaid to him during that conversation?

A He took me over to the side and he asked me if I knew anybody or if I could get rid of some treasury bills.

I asked him how much was involved. He told me three million dollars. And I told him that I knew a guy named Murray in Cedarhurst who I had done business with who might be interested.

I would let him know tomorrow morning what I could do.

Q At the time that you told Mr. Tavoularis you knew an individual named Murray, did you in fact know such a person?

A No, I heard of Murry who was a fence and I didn't know him personally.

- Q Did you ever contact Murray on February 27th?
- A No.
- Q Did you know where to contact him?
- A No, all I knew is he came from Cedarhurst.
  - Q Do you know his last name?
- A I might have heard but I don't remember it.
- Q How long did this conversation last?

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Q Had you known Mr. Tusa a long time?

A YEs, the same time as the defendant.

Did a conversation take place in the luncheonette 0 after you and Mr. Tavoularis met?

Yes.

Q Can you tell us what Mr. Tavoularis said to you and what you said to Mr. Tavoularis at that time?

A Mr. Tavoularis asked me how I made out and I told him my buyer would be interested depending on his seeing a copy of the bill.

And -- oh, I said my buyer would ! pay between 11 and 12 points. I forgot that, Mr. Tavoularis told me the day before --

Yes?

He had said they were offered 8 points by a fellow named Joe Fagano, and anything over 8 points he and I could split. I told him my buyer would be willing to pay 11 to 12 points depending on him seeing the copy of the bill.

Mr. Tavoularis told me that he would get me a I should stick around the luncheonette, and he left. copy.

> THE COURT: Would you explain what you mean by 8 points or --

> THE WITNESS: 8 percent, 8 points of the face value, and 11 or 12 points is 11 of 12 percent of the

MR. DOUGHERTY: That is correct, March 1st.

THE COURT: All right.

### BY MR. DOUGHERTY:

Q Then you testified there came a point in time you went home?

A Yes.

Q You are talking about your house?

A Yes.

Q Was anyone present when you arrived?

A My brother with his wife and my brother-in-law and my sister.

Q What is your brother's name?

A Michael.

Q What did you do when you got home?

A Well, just showed them the treasury bill and they asked me where I got it.

I said it belonged to a friend of mine and I was holding it for him. I went into the bedroom and copied the number down from the bill on a piece of paper and put it in my jacket and took my jacket off and hung it in the closet. I stayed home until they left, 11:30 or a quarter to 12:00, then I took the bill and went back to Mr. Tavoularis' house.

Q What happened to the piece of paper you copied the number down on?

4 1	DiRienzo-direct	
2	λ I tore it up after a while. The next day I	
3	believe.	
4	Q Did you do anything with that	
5	A Yes, I gave that number to the Secret Service	
6	Agent the next day.	
7	Q You say you proceeded to Mr. Tavoularis' house	
8	hat time that day?	
9	A 12:00, quarter after 12:00. Midnight: it was	
10	after midnight though because I left my house a quarter to	
11	12:00 and it takes a half hour to get there.	
12	THE COURT: I cannot hear.	
13	THEWITNESS: It took me at least a half hour	
14	to get to Tavoularis' house.	
15	THE COURT: To go back?	
16	THE WITNESS: From my house to his house.	
17	Q As best you can recall, what time was it when	
18	you actually arrived at the house?	
19	A I would say 12:15.	
20	Ω What if anything happened after your arrival	
21	there?	
22	A I rang the bell to the house.	
23	Q Where was the house located, do you recall?	
24	A In Ozone Park. I don't know the address. I	
25	still know how to get there but I don't know the address.	

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booth there. They were right near the phone booth.

- Did you recognize anybody else who was there?
- Well, Frank Tusa was behind the counter. A
- During the time that you were in the luncheonette, where was Frank Tusa?
- He was behind the counter. He was serving, you know.
- All right. Did a conversation occur after you arrival at Frank's luncheonette?

Yes. I asked Tavoularis if he had the bills and he told me that this guy has got them, pointing to Stuart Norman. And I said "Well, let me see them." So he says "Let's go in the back."

So we went to the back. There is like a men's room there. I opened the door and me and Stuart Norman went in the entrance of the men's room and Tavoularis stood out to the side and Stuart Norman pulled this envelope from inside his shirt. I opened it up, held it to the light and looked at the bills to make sure they were there, and then I gave it back to him and we went out to Tavoularis' car to go to my buyer.

> Q Can you describe the bills that you saw?

Well, I saw denominations, 50,000, 100,000, looked like a million dollars. It had more than six zeros, so I wasn't

started talking. Then he moved me over to the side and he asked me if I knew anybody or if I could get rid of some treasury bills.

Q Just that way? Is that the entire conversation?

A No. Then I said well, how much was involved.

And he said, 3,000,000. He says, he was offered eight

points by a guy named Joe Paganno and anything we could get

over that, him and I could split. So I told him, well, I

knew a guy named Murray in Cedarhurst. I'd have to find out

if he was interested and I'd let him know tomorrow morning.

- Q That was it? That's the whole conversation?
- A Yes.
- Q Where did it take place again in the luncheonette?
- A Over to the side, by the -- one of the tables and chairs. We were standing up.
  - Q Standing next to the booth?
  - A Yes.
  - Q Nobody else was sitting there?
  - A No.
- Q Where was Frank Tusso at that time, if you know?
  - A He was at the counter.

### DiRienzo-cross/Newman

some money, and I asked him what it was, and he said
if I knew anybody that would be interested in buying
Treasury bills. So I believe I asked him -- no,
I didn't ask him He said if I knew anybody that
would be interested in Treasury bills. I said,
'How much have you got?' He said, 'About \$3 million
worth.' He says, some guy, Joe Pasano, offered
8 points, and we could make everything over 3 points
So I said I might have a possible buyer, some fellow
named Murray. I just made the name up."

Were you asked that question, and did you make that answer?

A Yes.

Q Was that answer truthful?

A Yes.

Did you walk over with -- Did you tell any-body you walked over to any booth with Mr. Tavoularis?

A Well, I -- I didn't think it mattered. We still had the conversation. But I didn't remember at that time.

I remember now that we went over to the side by the booth.

Q By the way, before you came in here to testify did you meet with anybody from the United States Attorney's office to go over your testimony?

A Yes.

1		DiRienzo-cross/Newman
2	Q	To verify the serial number?
3	A	Once I gave it to them, they could check it,
4	if it was a s	tolen bill, which I assumed it was.
5	Q	Didn't you assume it was counterfeit?
6	А	It could have been.
7	Q	Isn't that what you told the Secret Service on
8	the phone, that it's a counterfeit?	
9	Α ·	I don't recall telling them that.
10	Q	Isn't that the reason that the FBI told you to
11	call the Secr	et Service, that you told them you had counter-
12	feit notes?	
13	А	I don't believe so.
14	Q	And after you copied the notes down on a piece
15	of paper and	you say you gave it to the Secret Service, you
16	ripped up the	piece of paper, right?
17	λ	Yes.
18	Ω	It was you who wrote it down, right?
19	А	Yes.
20		MR. NEWMAN: Will your Honor bear with me for
21	a minu	ite, please?
22		(Pause)
23	. · Q	By the way, when you told Mr. Tavoularis about
24	this buyer, y	you told him Murray in Cedarhurst, right?
25	A	Yes.

22

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1			1
		Norman-direct	592
	A J	Tuke box and a pool table.	
	Т	THE COURT: Pool table?	
	7	THE WITNESS: Yes.	
;	2	THE COURT: Is that a machine?	
3		THE WITNESS: Yes. Coin operated.	
7		THE COURT: Coin operated?	
8		THE WITNESS: Yes.	
9	Q 1	Did there come a time when you had oc	casion to
0	lend money to	Mr. Berman?	
1	Α .	Yes, I did. He was he was buying	John's
2	Bar at the tim	e.	

How much money did you -- was involved in this particular loan?

Two thousand. A

> Where did the money come from? Q

From me. A

Were these your personal savings?

It was from the business.

Getting back to the time that you met with the defendant Daniels, do you recall a specific conversation you had with Mr. Daniels around the fall of 1969?

He once mentioned to me if I knew where I can get rid of any securities. At that time I told him no.

Do you recall where this conversation took

	Norman-direct	593
:	place?	
3	A In the Williams Bar.	
.	Ω What were you doing there at the	time?
,	A I was making a collection at tha	t time.
3	Q Did he say anything which would	identify the
7	securities in any detail at that conversation?	
3	A No. Just that they were stolen	securities.
9	Q What did you say to the defendan	t Daniels at
0	that time?	
1	A I didn't know of any body that w	as interested
2	in it.	
3	Q After you made the loans to Mel	Berman, did you
4	have any further contact with him?	
5	A Yes.	
6	O Did Mr. Berman ever repay those	loans to you?
7	A No, he didn't.	
8	8 Q So that by the end of 1969, had y	ou received
9	any money back from Mel Berman in connection w	ith those loans
0	A No, I didn't.	
	Q What other connection, if any, d	lid you have
	-with Mel Berman besides being involved with t	the loans?
	A He started helping me out on the	route, as far
24	as helping me truck machines and what not.	le figured

he'd help me that way because he couldn't pay me back at the

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before as well?

THE WITNESS: No.

THE COURT: They just gave it to you that --

THE WITNESS: That morning, yes.

THE COURT: Do you know what was in the package?

THE WITNESS: A treasury note. I didn't find out actually until afterwards. I had looked. I didn't check it when I had got the package.

THE COURT: You did not check it?

THE WITNESS: No.

THE COURT: But you did find out later on?

THE WITNESS: Yes.

THE COURT: I am sorry. Go ahead.

Then you went to the apartment?

THE WITNESS: I went to Frank's Luncheonette.

That's near John's Bar. And I met Tavoularis and
DiRienzo there. And DiRienzo -- I had given the package
to DiRienzo. He went in the bathroom and looked at the
notes, the treasury notes.

Q Can you show the ladies and gentlemen how Mr. DiRienzo examined the package?

A Well, he took the notes out of the envelope and held it up toward the light and looked at them.

Q All right. At the time that you had left the

recess.

this holiday. So I will just thank you now belatedly.

All right. Don't discuss the case during the

(Whereupon, the jury retired from the courtroom.)

MR. NEWMAN: Would your Honor give us five
minutes to talk among ourselves, defense counsel?

THE COURT: You want all of five minutes? Can't you do it in two?

MR. NEWMAN: I will split it with you for three.

MR. LIGHT: A minute for each.

MR. NEWMAN: Thank you very much, Judge. Let the record show it was two and a half minutes.

THE COURT: It was even less than that.

MR. NEWMAN: I guess by virtue of my number one position on the indictment, I guess I make the motions first.

If your Honor please, at this time on behalf of the defendant Anthony Tavoularis, I move for a dismissal of the indictment and a direct verdict of acquittal on the grounds that the — if you look at the statute under which the defendant was indicted and the conspiracy count, one of the elements that must be established is that the defendant had knowledge that the bills in question were in fact taken from a bank.

And I submit to your Honor, careful consideration

of this record will not reveal a scintilla of evidence on that subject. And it's not a mere imputed element. It's actually a judicial element, because otherwise there would be no federal basis for this particular case. And that's the statute specifically that they elected to proceed under.

THE COURT: I understand what you are maying.

But knowledge -- as far as the federal -- if the bills are missing from the bank and if those bills -- if ther is evidence that that missing was stolen, I mean that the -- they were stolen, and both of those elements are present in one form or another during the course of a case, the knowledge that they were stolen from a bank may be inferred from the mecent possession of stolen goods from a bank.

MR. NEWMAN: Well, Judge, most respectfully, I haven't seen a case which imputes that kind of knowledge.

THE COURT: Inference.

MR. NEWMAN: Well, O.K. Just whatever word you want to use.

THE COURT: No. They are two different words.

that Mr. Daniels anyway said to Mr. Norman that these were stolen treasury bills, could be find a buyer for

THE COURT: Than they were missing.

that they were stolen and the bank's statement that they were saissing and I think it's enough -- they're

being the same bills -- I think it's enough that you can infer that they were stolen from a bank.

I.A. NELMAN: I am talking about Tavoularis now.

THE COURT: Well, I know. You're talking about a conspiracy also.

MR. HEWMAN: That's right.

have to know -- not each one of the conspirators
have to know oll of the facts and elements of the
crime. It's enough that they participated in furtherance of the conspiracy.

I think there is sufficient to show that all three of these defendants participated in the conspiracy.

MR. NEWWAN: I most respectfully disagree with you on the element of knowledge.

I think each one of the defendants west respectfully have to have the requisite knowledge in the comparacy and in the substantive count.

THE COURT: The substantive count is scrething

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As far as the conspiracy is concerned, if one of them knows that the bills had been stolen -- are stolen treasury bills and the evidence is within recent time that they were missing from the bank, I think you can -- it can be inferred that the defendant had knowledge from which they were stolen.

MR. NEWMAN: If your Honor gets a chance before
you rule on this question --

THE COURT: Is there any authorities?

MR. NEWMAN: I don't have the citation in front of me. Y. S. against Vilhoti Macurio. There was another defendant in that case, Santo.

THE COURT: Is it reported?

MR. NEWMAN: Yes, it is a Second Circuit case.

A case tried in the Southern District by my former part

ner.

MR. CHREIN: I have another case, U. S. against Gallashor, tried before Judge Mishler, and the case was reversed on the grounds that Gallshor, as I understand the facts, has been renting guns to a group of people robbing banks. His conviction was reversed on the grounds that he did not know that his co-conspirate intended to rob banks as opposed to some other crime despite the fact that it was a conspiracy to rob

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banks and as Gallashor's contribution was the previding of weapons to the robbers, the Court of Appeals
felt there was insufficient evidence to hold
Gallashor on the ground that he was unaware of the
scope of robbing Federally insured banks.

THE COURT: Do you have the citation?

You gentlemen con't come prepared to make a motion.

MR. NEWMAN: I apologize. Could we have an early luncheon recess? I will come back with authority.

THE COURT: Why can't you get it on the telephone?

MR. NEWMAN: I can't get it on the telephone.

I can get it in five minutes in the library.

THE COURT: What are your other motions?

MR. NEWMAN: Insofar as Tavoularis is concerned, the possession--in order to establish possession, it requires a showing of dominion and control.

All we have if we tak the testimony or the evidence on the substantive count in a light most favorable to the Government which we must for the purpos of the motion, we have DiRienzo saying that an envelope was given to him by Tavoularis, that in that envelope was a bill, and he said it looks like the bills he had in front of him.

1	Tavoularis is now charged with possession of
2	all of these bills possession indicates dominion and
3	control.
4	Every piece of testimony that I heard here
-5	
	clearly indicates that he had dominion and control
6	even if believed.
7	THE COURT: We have joint possession and control
8	here.
9	MR. NEWMAN: All right.
10	THE COURT: I don't buy that argument. You
11	may have an argument on this other point.
12	MR. NEWMAN: I would raise the argument then
13	of specific knowledge that is required under the
14	statute under the specific section
15	THE COURT: The samples were brought to
16	DiRienzo.
17	MR.NEWMAN: Brought an envelope, yes.
18	THE COURT: With the bill in it.
19	MR. NEWMAN: That's right.
20	THE COURT: Asked what it was, that's the
.21	sample.
22	MR. NEWMAN: That's right.
23	THE COURT: What more knowledge do you want?
24	MR. NEWMAN: Knowledge of the fact that it
25	came from a bank.

THE COURT: That's another question, but as far as the knowledge of recently -- knowledge of stolen property, that's something else again. He is a possessor of recently stolen property. That can be inferred. The only other question is whether it is from a bank. Judge Travia had this considered last time and I think he denied it. MR. NEWMAN: I don't think I raised that specifically. THE COURT: I think you did. (Continued on next page.) 

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hs/ne 5amla MR. CHREIN: Might I also call your Honor's attention to the fact that Mr. Connors when he testified for the Government on direct indicated that there was no indication on the treasury bill exhibits that he had seen to indicate that they were in the custody of a bank.

I know sometimes U.S. Savings Bonds might bear those indications --

THE COURT: That this --

MR. CHREIN: No indication on the treasury bills themselves that they were in the custody of a bank. They can be dealt with their brokerage houses. It would not be a felony to receive them from a brokerage house or an individual --

THE COURT: I understand that argument. I understand what you are saying on that point.

The question is: Can you make the mental leap when you have present possession of stolen goods, admittedly stolen from a bank -- does the Government have to show some knowledge either by admission or otherwise that they knew -- that they had been taken from a bank.

MR. CHREIN: I submit in terms of the statute-THE COURT: You are talking about jurisdiction. It arises the minute the goods are stolen from a bank.

2 which they have been. 1 685 There is no question here that they were 2 3 stolen and that they were missing from a bank. The jurisdiction is there. The sole question is whether 5 the jury and the Court may infer that the defendants knew that they were stolen from a bank. 6 MR. CHREIN: I believe the Government in 7 their own requests to charge requested that your 8 9 Honor charge the jury that the defendants in order to be convicted -- among the elements, it must be 10 shown that the defendants knew that the securities were 11 taken from a bank. 12 THE COURT: The question is can it be 13 inferred from the facts established? 14 MR. CHREIN: Assuming that you do have 15 possession of recently stolen goods you can infer 16 the knowledge from a theft, but the question is, do 17 we have recent possession --18 THE COURT: They admitted that they were 19 stolen. 20 MR. NEWMAN: What Mr. Chrein is saying is 21 that it doesn't have to be established, but that's 22 the --23 THE COURT: The question is can you infer 24 25 from that established fact that they knew it was

MR. CHREIN: I submit by the terms of the statute itself as pled by the Government it cannot be so inferred.

THE COURT: You are saying it has to be done by direct proof?

MR. LIGHT: You could draw the reverse because Norman testified he was first asked about securities-

THE COURT: They are securities.

MR. LIGHT: No, no. They are talking about stock securities.

THE COURT: No, no, securities are broad, it covers both bonds and stock and other intangibles.

MR. CHREIN: If I might read Section C of 3113.

"Whoever receives, possesses, conceals, stores barters, steals or disposes of any property or money or thim, of value knowing the same to have been taken from bank credit union, savings and loan association in violation of subsection B which punishes the actual theft," I would submit that the very act that they indicated that the person must know it was taken from a bank or some other Federally insured institution --

THE COURT: I am not arguing that point with

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you. I am saying the sole question is whether this knowledge may be inferred from all the facts which have been established.

MR. CHREIN: The usual line of cases dealing with inference says -- I am thinking of the Learney case -- whether a fact can be inferred from an established fact usually requires the inferrable fact must be -- almost exclusive inference --

THE COURT: No.

The Government doesn't have to make it every possibility. You have a question of recently possessed goods, knowing the same to have been stolen. Here you have the knowledge to have been stolen at least by one witness' testimony, that Daniels said that he knew that they had been stolen.

Now, the question is -- the sole question then is: Can you infer from that, since recently missing stuff from a bank, that he knew it was from a bank. That's the sole question as I see it.

MR. CHREIN: If your Honor is tying to the recency of the knowleddge, I would also submit that I don't believe Daniels' alleged statement to Normal was that close in time to the theft.

THE COURT: It was in the fall of '69. That's when they were missing.

1	5	MR.CHREIN: The fall could be up to December
2		21st.
3		MR. DOUGHERTY: I believe he said late '69.
4		THE COURT: I think I asked him that question
5		specifically. I was wondering how close in time it
6		was.
7		MR. CHREIN: My understanding of the fact
8		that the shortage there was no testimony as to
9		an actual theft but the shortage was discovered
10		in October of '69 and late '69 can run quite a dis-
11		tance from October.
12		THE COURT: It's not that far away.
13		MR. NEWMAN: Tavoularis is in a different
14		position. Tavoularis enters the picture, at the
15		earliest, February 27th.
16		THE COURT: That may be.
17		As far as the conspiracy count is concerned
18		I don't have any difficulty assuming that it is
19		inferable that it is inferable from the established
20		facts, assuming. I haven't heard from the Government
21		yet.
22		(continued next page.)
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MR. LIGHT: I would just like to say a word with reference to the defendant Poerio.

I join in the motions of co-counsel and I would like to add that I think as far as Mr. Poerio is concerned, he should get a directed verdict and the case shouldn't go any further as to him, if the Government has rested.

We have testimony of Mr. Di Rienzo when Mr. Poerio was within two or three feet of him he said that he couldn't recognize his face. He said the eyes are similar -- the eyes look alike, but he couldn't recognize the fact. That is the whole connection that Mr. Poerio has with respect to Mr. Di Rienzo.

Mr. Norman looked around the courtroom for at least 60 seconds. In fact he was looking at Mr. Newman when he was talking about somebody with a goatee. It was only after the next question by Mr. Dougherty that he directed at Mr. Poerio -- looked at somebody who doesn't have the goatee or beard. When he I objected he said that he looks like -- the defendant looks like -- looks like him.

I submit to have two identifications, where one the defendant looks like him and second where the eyes look like and he can't recognize the face, I

do not think we have a question of fact that should go to the jury. I think that's the only connection that Mr. Poerio had with this case.

THE COURT: On identification your motion is denied.

MR. CHRIEN: For the record, I do not think
the record indicates that I join in the motion to
dismiss the indictment and for a directed verdict of
acquittal on both counts, on the wanton proof of
knowledge from a bank as far as my defendant is
concerned.

of knowledge as to the substantive count as to Mr.

Tavoularis -- with respect to Mr. Tavoularis and

possibly with respect to Mr. Poerio, that is something else again. If there is anything to the

inference of knowledge as to your client, it seems to

me from my recollection of the testimony that Mr.

Daniels said to Mr. Norman that they were stolen on

the first occasion. Whether you can infer that

Mr. Tavoularis and Mr. Poerio knew that they were

stolen, as distinguished from counterfeit or what have

you, I do not know at this point. I am talking

about the substantive count.

MR. CHRIEN: I am talking about both counts --

THE COURT: He knew that they were stolen.

Mr. Daniels fingerprint was on one of them. As far as the substantive count is concerned, unless I throw the whole thing out, Mr. Daniels is on both counts.

MR. CHRIEN: The gravamen of my application is that there is no proof -- even if he knew it was stolen -- he did not know it was stolen from a rederally insured bank.

THE COURT: You do not have to know it was from a Federally insured bank. All you have to know is that it came from a bank.

The question is can you infer that from all of the testimony in this case?

MR. CHRIEN: The thrust of my argument is that it cannot be inferred. It is an essential element and wanton proof of the essential elements, destroy the Government's case against'my client.

THE COURT: Then it does so against all the other defendants.

MR. CHRIEN: I would join in my colleagues motions directed to that point also.

THE COURT: Let us see what happened at the last trial.

MR. NEWMAN: Can you tell me what page you

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are reading from?

THE COURT: I am trying to find what page your motions were made. I have some recollection that this came up at the last trial.

(Pause.)

"Mr. Newman, secondly, I submit to your Honor that in effect my motion should be granted by one of the elements of 2113C as distinguished from the other constituting having to do with possession of stolen property or misplaced property or lossed property, the fact that it must be shown that defendant knew the source of the merchandise. fact knew it was stolen from a bank -- page 742 -- in this case there is no not scintilla of evidence that anybody knew where it came from, let alone that Tavoularis knew where it came from or that fact was communicated -- Mr. Borrough arguing four pages later -- going back to the possession required in 2113 -- page 752, this is you -- "There wasn't a scintilla of evidence that Tavoularis knew that they were taken from a bank and I think that has been shown under this statute."

\*MR. BORROUGH: There is no direct evidence...

there is no admission of conversations that he knew

the Treasury bills were in fact stolen from a bank...

we have a great deal of circumstantial evidence...

firstly we have the bills themselves...one of the cases I cited in my request to charge...dealt with the circumstantial evidence of knowledge of a defendant in a Cadillac...in that case, however, he was in possession of money that was serialized... combined with the other factors were sufficient to show his knowledge that it was stolen from a bank.

"Here we have a great deal more. People don't walk around with 50,000 or 100,000 or a million in United States Treasury notes. Also we have the defendant's conversation with Mr. Di Rienzo when they first talked.

THE COURT: I am going to deny the motion and leave it to the jury."

MR. NEWMAN: In all due respect -- I am sorry,
you have something else you wanted to say?

THE COURT: You said that you didn't argue the
point.

MR. NEWMAN: I apparently did.

THE COURT: I read that portion of the record, if nothing else.

MR. NEWMAN: I don't have the minutes of that portion. I just have the minutes of the witness' testimony.

Apparently I was better prepared the last time.

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THE COURT: You never come unprepared.

MR. NEWMAN: I do not have the citation of the Arotty Case.

In all due respect to Judge Travia, I do not think that is the issue. I don't think it rises to that level if it is a required element of the count statutorialy.

THE COURT: Well, possession of property in interstate commerce does not provide that you must show the same was stolen from an interstate shipment

MR. DOUGHERTY: I believe specific intent is a requirement.

stolen while in interstate commerce. It is never necessary to do more than to show facts from which it can be inferred that they had been in an interstate shipment. There is no need to prove that somebody has in their garage all of these cartons of goods stolen from an interstate shipment, that they actually knew that at one point it was in an interstate shipment. I think it has been the rule ever since — ever since my exposure to the rule which goes back to 1953 — I remember trying a case where Papermate Pens were in possession of a fellow that

you'd have to have some tie to the person who perpitrated the theft.

MR. NEWMAN: I do not think so.

what you might be able to do, circumstantially, is show that they were numbered in serial for example show that they came out of a container that had an indication of a bank, show that there was some word by one of the conspirators that it is from a bank --

THE COURT: That would be an admission.

MR. NEWMAN: I am not saying the defendant.

Then you can compute knowledge. I am talking about the quality of the evidence that you need to prove this.

THE COURT: But what he is saying — what is the citation of the Chron case?

MR. DOUGHERTY: 411 F. 2d 251, 254 and 255.

THE COURT: Do you want to run next door to see if you can get it from the library?

MR. NEWMAN: Yes.

MR. CHRIEN: Could I have five minutes?

I would like to go next door also.

THE COURT: Yes, I will wait right here.

(Pause.)

(Cont'd on next page.)

BS:GA T6 AM

MR. CHREIN: Your Honor, thank you for the opportunity to go to the library.

Earlier I had cited the case of the United States against Gallashaw for the premise that a defendant must know the scope of the Conspiracy to be held accountable. The citation of that case if 428 F.2d, 760. It is a Second Circuit case reversing an Eastern District conviction.

Now, do you want to go?

MR. NEWMAN: I was going to go to Valatti, United States against Valatti, 452 F. 2d, 1186, a 1971 case, and it had to do with property stolen from interstate commerce, and it had to do with several issues, which I think are analogous to my situation ---

THE COURT: Have you read the Crone case?

MR. CHREIN: I believe it is a Fifth Circuit case

Supreme Court cases, and it stands for the proposition while there is no direct evidence that the defendants knew the travelers checks were stolen from a bank, there is circumstantial evidence that possession of the property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably draw the inference and find in light of surrounding circumstances shown by the evidence in the case, that the

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person in possession not only knew the property was stolen, but also participated in some way in the theft of the property.

Then they cite about six United States Supreme Court cases.

MR. NEWMAN: That's right. But I don't think it is analogous, most respectfully, to our --

THE COURT: This is a fortiori, because here in the case of Daniels, according to the Government's proof, he knew that it was stolen. There they had to infer the fact that not only was it stolen, but it was stolen—

There is a double inference there. Here there is only a single inference. So this is an a fortiori case to the Crone case.

MR. NEWMAN: May I be heard for a minute? I don't think it is analogous to my situation with Tavoulari

fortiori. In the case of Tavoularis, since he is part of this Conspiracy with Daniels and the rest of them, there is no doubt in my mind as far as the Conspiracy Count, and there is no doubt any longer if Cronin is the law, and I think it is, there is no doubt about the knowledge; they can infer his knowledge that they were stolen, and they can infer that he participated in some way in the theft of the property.

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MR. NEWMAN: Judge, starting all the way back from scratch, it is my contention that insofar as Tavoularis is concerned, taking the testimony at its best for the Government, they did not show possession, which in the Valatti case indicates exercise of dominion and control.

The best they have is an envelope with the bill, which looks like the bills in evidence. That is, as I understand it, DiRienzo's testimony.

THE COURT: Mr. Newman, plus the fact that he was there -- Norman puts him there as part of the Conspiracy on the day before and the day after the arrest he was -- He never knew DiRienzo, he was dealing with Tavoularis.

I am not the least bit concerned about possession and control. This is the only question I thought that had any substance, but I don't think it has any substance, given this authority.

MR. NEWMAN: In addition to which, insofar as

Tavoularis is concerned, I submit to your Honor that the
bootstrap of the entire inference that your Honor is being asked to draw is possession of recently stolen merchandise vis-a-vis him.

If we take that testimony from Mr. DiRienzo, as far as Tavoularis is concerned, if your Honor has made the jump, and imputed possession to him, it is not until February of 1970 on a theft that took place in October.

THE COURT: You have to draw this whole picture here. DiRienzo testified that they were talking about getting twelve points out of Murphy. And they were going to buy them from Daniels, Berman, et al., at eight points, and split the difference. There is no circumstantial evidence from which one might infer that these were stolen goods.

I don't know what more you want.

MR. NEWMAN: That is not what I am saying to you.

I'm sorry, maybe I didn't articulate. But before any
of these inferences can arise, it has to be, the way
your Honor is reasoning, if I understand your Honor's
reasoning, you are saying that it is recently-stolen
merchandise, that Tavoularis is in possession of it,
and transfer all these inferences are permissible inferences. I am contending that vis-a-vis Tavoularis, if we
take the evidence rost favorable to the Government, I
contest possession. Your Honor has already overruled me
on that issue. I now contest that vis-a-vis Tavoularis
that it is recently-stolen merchandise.

THE COURT: I think it is sufficiently recently stolen merchandise.

We are talking about a span of three to four months during which this Conspiracy evolved, and it is sufficient to go to the Jury on that question, as I see

it. I have not read these other two cases, here they don't overrule Crone.

MR. NEWMAN: There is United States against Hamilton, which we discovered, also, 457 F. 20, 72.

MR. CHREIN: Your Honor, the particular point that we are interested in is at 99 of that citation, which the same problems addressed by the Court convey, ing knowledge of evidence from a protected institution and in that case, the Court hung its hat on the fact that the particular documents were marked, indicating the place — the credit union or Savings & Loan Assemble tion from which they were stolen.

Another point that I would like to raise is -THE COURT: That may well be in that case, but

MR. NEWMAN: They did go on to say that it had to be specifically -- It is a specific element of the crime that had to be established, the knowledge of the situs of the theft, not the specific situs, but a situs that is covered by the statute. But they had a second element

THE COURT: I agree with that. We get right back to the question, Is it a permissible inference, and according to Crone and the Supreme Court cases which I assume Judge Fisher is not just pulling cases out of his hat --

MR. NEWMAN: I wouldn't assume that --

THE COURT: -- say that it is a permissible inference to be drawn.

MR. NEWMAN: There was one other aspect to the Mamilton case which I thought was interesting from my point of view, perhaps selfishly, and that was, Judge, they talked in terms of the recent possession, which gives rise to the permissible inferences, and in doing so, Judge, they evaluated six weeks and twenty-four days, and the conclusion they came to was that there is no hard-and-fast rule that they can determine, but they can determine, but they can determine, but they held that the twenty-four days and the six weeks were sufficient, implying, in my mind, maybe again jaundicely, that what we have here is, we have a theft or a disappearance in October, and if I understand the evidence, the first discussion and the first evidence we have of Tavoularis is February 27th.

THE COURT: Four months.

MR. NEWMAN: Yes. I submit to your Honor that that is not -- My objection is, it is not such recent possession.

MR. DOUGHERTY: I have a case where six months
was held sufficient for an inference of recent possession.

THE COURT: If this Conspiracy had started in 1971, the Government's first proof was in -- the fall of

1970, a year after it had been missing, I would say it started then, and you say your client didn't show up until February of 1971, I would say you have a good argument. But I don't think that where a Conspiracy, according to Norman, started in the fall of 1969, and continued right down to the date of the arrest, I think there is more than ample proof.

MR. NEWMAN: I would also object on an additional ground, Judge, or move to dismiss, that in fact what was established here, if anything, were two Conspiracies, if the Government's proof was taken on its face.

THE COURT: Two Conspiracies? What is the second one?

MR. CHREIN: Your Honor, I think ---

THE COURT: Wait a minute.

MR. CHREIN: I'm sorry.

THE COURT: What is the second one?

MR. NEWMAN: The first Conspiracy is the so-called Conspiracy between Daniels and Poerio, and Stuert Norman. The second one is the alleged Conspiracy between Berman and Tavoularis.

THE COURT: Mr. Poerio sort of tied it in to one when he said, "I must have got a lot of money on this deal.

MR. LIGHT: That's the point. Jimmy said that, we got that in the Grand Jury minutes --

THE COURT: Let's assume Jimmy said it. I think he is right, he had a lot of morey tied in this grandiose Conspiracy.

MR. DOUGHERTY: Vinnie said he wanted to find out who ratted.

MR. CHREIN: On the subject of two Conspiracies, one of the cases cited in the Government's Request to Charge, it is a 1938 decision by Judge Learned Hand, Pione. It deals with a situation where a defendant buys counterfeit currency in the Bronx and then sells it to one intermediary, and another intermediary, who in turn sells it in the Eastern District, some place in Brooklyn, but the point that I am addressing myself to is that Pione held that once the person who was the seller sells it to somebody else for resale, his interest terminated in that transaction, and he could not be deemed a Conspirator with people coming down the pike later on.

THE COURT: Jimmie says, "We are all waiting for our money in this case."

MR. CHREIN: I don't believe he said that at that stage of the Conspiracy, that Daniels or anybody else was waiting for the money.

THE COURT: There is no proof that anybody wasn't waiting for their money. Everybody was waiting to see if they could get the twelve points.

from a bank.

You fellows fly over the point very fast when I point something out to you.

MR. CHREIN: I would like to go to another point the language in the Crone case indicates that recent possession might infer knowledge -- might provide the basis for an inference of knowledge of theft from a bank, because recent possession can even justify an inference of participation until the actual theft.

The particular case dealt with in Crone deals with, I believe, a theft from a Western Union, but the case we are dealing with here --

THE COURT: Oh, no, it's a bank.

MR. NEWMAN: It's traveler's checks, isn't it?

THE COURT: Traveler's checks, numbered seriatin,

MR. CHREIN: This is not provided in the test of the Crone decision, but I assume knowledge of the way the disappearance or theft took place might have been available in that case.

Here we have a guarded, secured area of a bank, and I don't believe that --

THE COURT: It doesn't appear that way from the decision.

MR. CHREIN: It is unclear from the decision.

THE COURT: It says that all the Government showed

was, and then he recites that the evidence shows that defendant had possession, actual or constructive, of the stolen traveler's checks. That's all there was.

MR. CHREIN: The point that may be distinguishable is that here we are dealing with a disappearance. I don't believe there has ever been any actual proof of theft itself.

THE COURT: But Mr. Daniels said so.

MR. CHREIN: But the actual matter of the theft

THE COURT: This is even stronger than that.

MR. CHREIN: If we are to take Mr. Norman's testimony as true, Mr. Daniels indicated that he knew they
were stolen, but stolen from where? Perhaps there was
a legitimate transportation.

THE COURT: Here they didn't have that in Cronin.

MR. CHREIN: It is silent.

THE COURT: I don't understand.

MR. CHREIN: I do.

THE COURT: :In the substantive Count, of course,
you have got a Section Two charge, so that if nothing
else, the Jury could find that Tavoularis, Poerio, et al.,
aided and abetted this transacton from that point on. I
think there is sufficient.

Where do we go from here, Gentlemen?

MR. NEWMAN: I wanted to ask some directions from

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Berman '

work for a company?

THE WITNESS: Yes. I worked previously for Hamilton, then for Davega, Breslin's.

> THE COURT: Were you employed in 1969, 1970? MR. LIGHT: Your Honor, I would object to the

THE COURT: I want to find out what this witness's background is before you ask him any questions. Were you employed in 1969?

THE WITNESS: Yes, I believe I was, most of the

THE COURT: By whom?

THE WITNESS: I believe in that time I had my own business, a soda trucking, home delivery.

THE COURT: All right. You may proceed.

DIRECT EXAMINATION

BY MR. LIGHT:

Mr. Berman, are you here pursuant to a subpoena served upon you as a witness?

> A Yes.

MR. LIGHT: With the Court's permission, may I have Mr. Poerio please come close to the witness? THE COURT: Any objection, Mr. Dougherty? MR. DOUGHERTY: No objection.

with a beard or a goatee, with dark hair, did you ever see

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a person like that?

1	4		Berman - direct				
2		A	I don't know this man. I never saw him.				
3			MR. LIGHT: Thank you.				
4		٠.	Mr. Poerio, will you please be seated.				
5			I have no further questions.				
6			MR. CHREIN: May I examine this witness?				
7	3		THE COURT: Wait a second.				
8			The proper order is the prosecution goes next				
9							
10	and then you can examine, if they wish to examine.						
11	CROSS-EXAMINATION						
12	BY MR.	DOUG					
13		Ω.	Mr. Berman, do you remember being subpoensed for				
14	the last trial?						
		A	Yes.				
15		Q	In December of 1972?				
16		A	Yes.				
17		Q	Did you show up?				
18			MR. LIGHT: I would respectfully object.				
19	·		Mr. Poerio was not on trial at any last trial.				
20			THE COURT: Overruled.				
21		Q	When did you get to the Courthouse? Do you				
22	rememb	er wh	ere you had to go?				
23	/		MR. NEWMAN: I object to the form of that				
24		ques	tion. There are three questions there.				
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THE COURT: Tkae them one at a time.

THE WITNESS: Yes.

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MR. LIGHT: I'm going to object to this entire!

THE COURT: Now, listen to me. Did the subpoena say Westbury?

THE WITNESS: I believe so.

THE WITNESS: As I say --

THE COURT: And you didn't go to Westbury?

THE WITNESS: Not that particular day, no.

THE COURT: All right. You may proceed.

## BY MR. DOUGHERTY:

Remember having a telephone conversation with me about two months ago?

I don't even know your name, sir.

My name is Mr. Dougherty.

Dougherty, yes.

Was that pursuant to a letter received from me regarding the trial of this case?

Yes.

And do you remember the sum and substance of that conversation you had with me?

Basically, yes.

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Berman -	cross	-	Dougherty
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Q And did you agree to make an appointment to come into my office --

MR. NEWMAN: Your Honor, I'm going to object and ask for a side-bar, if it please the Court.

(The following occurred at side-bar.)

THE COURT: This man's credibility is at stake
Mr. Newman.

MR. NEWMAN: I didn't call him as a witness.

THE COURT: I don't care whether you called him or not.

MR. NEWMAN: This is my request for a side-bar Judge. I shall object to the form of the questions which put the prosecutor's credibility at stake here where he says: Didn't you have a conversation with me? Didn't you say to me? Didn't you, etc. etc. That definitely puts --

THE COURT: It is the man's credibility that is at stake.

MR. NEWMAN: I object to the form of those questions because I submit --

THE COURT: Objection overruled.

MR. NEWMAN: May I complete the record, please?

I submit to your Honor this puts Mr. Dougherty's credibility in issue, which is prohibited by a whole

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series of decisions.

In addition to this, I object to your Honor's questions of this witness without having advised him of his Fifth Amendment rights and his right to counsel.

THE COURT: You are not his actorney.

MR. NEWMAN: I am objecting anyway for the record.

MR. LIGHT: I would state my objection also for the record.

It appears from the raising of your voice in some of the questions you directed towards the witness that the Jury may get your impression of the case or of the witness.

I think it is up to the prosecutor to ask questions in reference to these points.

THE COURT: He wasn't answering the prosecutor's question, Mr. Light.

MR. LIGHT: I think it is improper for your Honor.

THE COURT: I wanted to find out what the answer was to those questions.

MR. LIGHT: The way your Monor raised your voice to me --

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THE COURT: I didn't raise my voice.

MR. LIGHT: The Jury turned around and looked, the impression I got, is why is the Judge so involved or interested.

I don't think it is fair.

(The following occurred in open Court.)

## BY MR. DOUGHERTY:

Q Do you recall making an appointment to come into my office for a particular date?

MR. NEWMAN: Your Honor, jumping up, Judge,
may I have a continuing objection to that question?

THE COURT: Yes. Your objection is overruled.

THE WITNESS: Ask me that again, sir.

Q Do you recall making an appointment to come into my office for a particular day?

A No.

You don't recall that?

A No. Not for a particular day. You said at my convenience, if I recall.

Q Did you tell me you were going to come into my office?

I said in the near future, yes.

Q Did you ever come into my office?

A No, but I was --

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	1	13		Berman - cross - Chrein
	2	Danie	ls, ha	ve you ever seen this gentleman before?
	3.		A	No.
	4		Ω	Have you ever been to his apartment in Bay
	5	Ridge	, Brook	klyn?
	6		A	No.
	7		Q	Do you know Stuart Norman?
	8		Α,	Yes, sure.
	9		Q	Were you ever introduced to this gentleman b
	10	Stuar	t Norm	an?
	11		A	No.
	12			MR. CHREIN: I have no further questions.
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C fols.	14			(Continued on next page.)
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24 25 CROSS-EXAMINATION

BY MR. DOUGHERTY: (Cont.)

On one of these occasions when you had an interview, do you recall a Special Agent David Cassens?

A Yes.

Q Were they present with you up at an interview in their offices up at the FBI on East 69th Street?

A Yes.

Q Do you recall what you said to those two special agents on that occasion?

A Basically, yes.

Q Do you want to tell us what you said?

A They asked --

MR. DOUGHERTY: May I interrupt the witness for a minute and can we have a side bar?

THE COURT: Yes.

(Side bar.)

MR. DOUGHERTY: Your Honor, I think at this point it's necessary for this witness to be advised of his rights so that he can make a conscious decision whether he wants to continue to testify.

MR. NEWMAN: I will object to it being done now on the Government's cross-examination because that will be a determination --

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THE COURT: We will excuse the jury and I will advise him.

(Open court.)

THE COURT: Ladies and gentlemen of the jury, would you step outside for just two minutes.

I will call you right back.

(Jury excused.)

THE COURT: Mr. Dougherty, representing the prosecution, wants the Court to advise you of your constituional rights, and your right to an attorney at this stage in the proceeding.

Do you have an attorney?

THE WITNESS: I consulted an attorney, yes, but I don't have him present with me.

THE COURT: Do you want him present?

THE WITHESS: No, I don't think it's necessary

THE COURT: Do you understand your constitutional rights not to say anything that might tend to incriminate you?

THE WITNESS: Yes.

THE COURT: You do?

Has it been explained to you by an attorney?

THE WITNESS: Well, basically, yes, but it's common knowledge, I believe.

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(Jury present.)

THE COURT: Mr. Dougherty.

MR. DOUGHERTY: May it please the Court,

Mr. Newman, Mr. Chrein, Mr. Light, Mr. Daniels,

Mr. Poerio, -- and I don't see Mr. Tavoularis.

MR. NEWMAN: Here he comes. He wouldn't miss it.

THE DEFENDANT TAVOULARIS: I'm sorry.

MR. DOUGHERTY: Ladies and gentlemen of the jury, I must admit that Mr. Newman's act is kind of a though one to follow, in fact, if I try to raise my voice as high as he can I will probably strain myself.

What I am going to try to do is try and give you in my own words and in my own style my reasons why I think you should return a verdict of guilty in this case.

Remember, in my opening remarks, I told you to listen carefully to all of the evidence and while there may be repetition you should keep a close ear because no one piece of the evidence told the whole story, and that as the evidence would go in the pieces of the puzzle would start to fall into place until you were left, hopefully, with an impression of the whole picture.

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I submit to you that putting together various testimony of Marold Connor, Richard Jagen, Mr. DiRienzo and Mr. Norman, that you have that picture in front of you right now.

I submit, further, that that picture establishes that the defendant Anthony Tavoularis and the defendant Louis Daniels and the defendant Vincent Poerio are guilty of the charges in the indictment.

Let's review that testimony: First we had Mr. Harold Connor, not much of a witness, didn't have too much in the way of nitty gritty to offer us, but he testified that he was working in the Custody Department of Morgan Guaranty since 1930 and that in October of 1969 he was the officer in charge of that department.

I showed him a series of business records made and kept by the bank in the ordinary course of the business of the Custody Department, and you recall that he identified certain numbers on the bottom portions of those records, and then I handed him a series of treasury bills in various denominations and I asked Mr. Connor to compare those bills against the records that he had established were business records of Morgan.

Serial numbers on the treasury bills that I handed him here, the treasury bills that were taken from the body of Stuart Norman on March 4, 1970, that those very same serial numbers were on the records of Morgan Guaranty, and that those treasury bills involved in those records were part of 13 million dollars worth of treasury bills that were discovered missing by Morgan Guaranty in October of 1969, and that it took him four days to check their records and to have their custody department, and they checked in the vault and after four days they were able to reduce to a list of unliquidated securities the items that were discovered missing by Morgan Guaranty.

Mr. Newman asked Mr. Connor whether there was a standard operating procedure in a loss of this amount of securities, and I think Mr. Connor's answer is something you should bear in mind, that there is no standard operating procedure when a bank loses 13 million dollars in treasury bills.

I don't think that is the kind of thing that happens every day. You recall, further, that Mr. Connor testified, again from records, that those treasury

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bills were involved in repurchases, resales between Morgan Guaranty and the Bank of Tokyo, and the Bank of Commerce and another bank in Memphis, Tennessee, I believe. So the bills are identified.

Mr. Connor came in and he told you ladies and gentlemen that the treasury bills that Mr. Norman had on his person, as far as his records indicate, were part of the thirteen million dollars that were stolen, or reported missing at Morgan Guaranty in October of 1969.

I believe he was asked also whether in all of the years of his experience the people in the vault department ever made a goof.

Do you recall what his answer was, he said he couldit remember a single situation where they had slipped up in the vault department.

I would imagine that they are pretty careful in the vault department because they are not dealing with nickles and dimes down there.

You recall further, that Mr. Connor testified, when asked about whether or not it was possible for the customers to come into the bank and pick up the bills directly instead of having them transferred from one part of the bank to the other, you remember

initally, he said: Well, I don't think anybody would come from Toledo and pick up five million dollars of treasury bills and take them home with them.

He testified further that in order for a direct pickup of treasury bills to be accomplished in Morgan that there would have to be an authorization letter sent to the bank, that there would have to be a signature of the person picking up the bills, that that signature would have to be verified, that there would have to be an identification procedure followed. The records of Morgan Guaranty, as far as these particular bills are concerned, are non-existent that such a direct pickup of treasury bills was ever made.

Next, we come to the testimony of Agent Richard Jagen, of the Secret Service. If you recall, he testified that on March 2, 1970 he had a meeting with Mr. DiRienzo at about six o'clock that night at a Mearns Drugs Store, they left Mearns and went upstairs to the offices of the Secret Service, and that that meeting was a result of an earlier telephone call that Mr. DiRienzo had made to the Secret Service, at which time he had told them what he had and a meeting was scheduled for that evening.

If you recall, Mr. Jaben testified that after the agents, I believe, maybe Agent Scott or Agent Gibbs was also mentioned, and himself met Mr. DiRienzo that Monday night, that they then went up to the offices of the Secret Service and spent about one or two hours talking about what the information was that Mr. DiRienzo had to relay.

You recall, also, I think, one of the attorneys in the case asked Mr. DiRienzo what the -- what he had been told by the agents, and the agents said, "You keep your appointment for the next day." Because the next day was when the bills were supposed to be transferred, when they were supposed to all go over, make a killing with Murray over in Cedarhurst.

I think Agent Jaben testified, further, that a surveillance was initiated of the luncheonette on East New York and Snedecker Avenues, and at 2:00 o'clock, the same time that Joe DiRienzo says he left the luncheonette with Anthony Tavoularis to go pick up a sample -- I'm sorry, I think my recollection is in error -- to go pick up the hills, a whole package; at that time who comes out but Anthony Tavoularis, and Agent Jaben sees him from his automobile, from where they are conducting the surveillance.

## Summation - Dougherty

Now, Mr. Newman suggests that that is more or less in the nature of surmise or speculation or suspicion, and that it is not — does not meet the mark as far as the Government's burden of proof here, but I submit to you that you should put all of these various threads of evidence together and put together the thread of evidence of the surveillance of Mr. Tavoularis on that Tuesday afternoon at 2:00 o'clock with the evidence that you heard from Agent Jaben with Mr. DiRienzo the night before when they said you keep your appointment the next day and you get those bills.

There has been a lot of talk about a trip to

Kennedy and that being a wild goose chase. That wasn't

a wild goose chase, it became a wild goose chase

because Mr. Tavoularis had difficulty upon difficulty

in getting the package to Mr. DiRienzo and the only

purpose Mr. DiRienzo had in going to the airport, I

submit, was for the transfer of the total package

of 2.7 million dollars in treasury bills.

The only reason why that never came off and became a wild goose chase for the agents was because Mr. Tavoularis didn't hold up his end of the deal and didn't come up with the package when he said he was

going to.

Then we come to Wednesday. Keeping in mind that Mr. DiRienzo showed up at the Secret Service offices Monday night, and by Wednesday arrests were made in the case, and 2.7 million dollars worth of bills were recovered, a gap of about one day, I would call that pretty quick service.

I believe Agent Jaben was also asked by

Mr. Newman whether he had ever equipped Mr. DiRienzo

with a Kel transmitter, and the agent's answer was

that he had not. Then I came back on redirect and I

said to Mr. Jaben, are there any circumstances when

the use of a Kel transmitter would not be proper, and

he said in his experience there were such circum
stances, and I asked him whether the circumstances

involved in the transfer of these treasury bills

would be such a circumstance and he said: Yes, we

would not risk a Kel transmitter in these circumstances.

We didn't even know how many people were involved.

Then, finally, I think the agent's testimony culminated in the description of the contraband that he received from another agent on the morning, that Wednesday morning outside Frank's when he was told that

another agent had given him an envelope, that he checked the contents of that envelope and the treasury bills were in there, and he compared those treasyry bills against a list of missing bills from Morgan Guaranty and the numbers were the same.

I ask you, do you think that's speculation?

Did Mr. Jaben speculate that those securities were
not from Morgan or were from Morgan?

Did he speculate that Mr. Norman had those securities on Wednesday, March 4th? Did he speculate that there was supposed to be a meeting the day before, that Tuesday, when the treasury bills were supposed to be exchanged between Mr. Tavoularis and Mr. Norman and Mr. DiRienzo, or was he acting on the information that he was receiving from Mr. DiRienzo, that information since Monday night?

Then we come to Mr. DiRienzo. Born in Brocklyn in 1927, lived in East New York for about 30 years, and the nickname "Monkey" since he was ten, and I suggest to you that perhaps the name fits. I'm not going to ask you to consider that Joseph DiRienzo is the purist soul that ever walked in a courtroom, and I'm not going to ask you to invite Joseph DiRienzo home to have dinner with you and your family,

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but I ask you, when you have got three million dollars worth of treasury bills, who do you go looking to fence them with, to the Pope?

Would you expect Mr. DiRienzo to come riding in here on a white horse?

Mr. Newman had alluded, I think, earlier to the fact that there were some logical inconsistencies to the story. Perhaps Mr. DiRienzo himself is a logical inconsistency; perhaps he's not the cleanest slate that the Government could have told its story off of, but we took him for what he was and we offered him for what he is and I submit to you that based upon his testimony and everything else in the case that Mr. DiRienzo's story is truthful.

Let's review the testimony: Mr. DiRienzo didn't say that he walked into Frank's that Friday night and the first thing Mr. Tavoularis did was say, "Hey, I got some treasury bills, let's see if we can get rid of them." That wasn't his testimony. He said they went into Frank's Luncheonette, they had the coffee, they said hello, are you working? Are you making money? Then in the middle of that conversation, Mr. Tavoularis grabs Monkey by the arm and takes him aside and says, "Hey, look, a guy named Joe Pagano offered me eight

#### Summation - Dougherty

points -- I was offered eight points for treasury bills, we can make anything over eight points. Can you move them?"

Is there anything strange or incredible about that story? Perhaps the only thing incredible about it is that Mr. Tavoularis and Mr. DiRienzo are talking about three million dollars worth of treasury bills in Frank's Luncheonette in the middle of Brooklyn, but I don't think there is anything else incredible about his testimony about that morning.

Mr. Tavoularis tells Mr. DiRienzo about the bills, I believe Mr. DiRienzo then comes up with the name of Murray, our imaginary Murray from Cedarhurst.

I ask you, if somebody offered you the opportunity at least to hold treasury bills, three million dollars worth of treasury bills in your hand, would you be slightly curious? So they have a conversation, the whole thing takes ten to fifteen minutes, and then there is an arrangement for them to meet the following morning. Mr. Tavoularis says, "You meet me tomorrow morning and I'll get you a sample," or words to that effect.

once again, I caution you that it is your recollection that controls, not mine.

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So we are back at Frank's Luncheonette the next day, ten o'clock, having coffee, Mr. DiRienzo tells Mr. Tavoularis that his buyer is willing to pay 11 to 12 points, depending upon seeing a sample.

What does Mr. Tavoularis say? He says, if this deal is pulled off we can have access to ten million dollars more.

What do you think is motivating Mr. Tavoularis at this point? There has been a lot of talk about what might have been motivating Mr. DiRienzo. Agreed, revenge. What about Mr. Tavoularis? Do we have a right to question his motives and examine his motives? Was he happy with the 2.7 million dollars trade of treasury bills, or was he going for bigger and better things?

Let's get rid of the whole thirteen million and we will be set. Is that agreed?

Then I think Mr. DiRienzo testified that
Mr. Tavoularis left the luncheonette and came back
about 2:00 o'clock that afternoon and that they then
went in his car to Howard Beach to pick up the sample.

Mr. Tavoularis gets out of the car, he goes up into the house, Mr. DiRienzo watches him, he goes into the right-hand door on the right-hand side. After

about ten or fifteen minutes he comes back, Joe asks him if he's got the sample, Mr. Tavoularis throws the envelope in the car, "It's in here."

Mr. DiRienzo then opens the envelope and he looks inside and there is a hundred thousand dollar treasury bill. It's probably the first time he ever saw anything like that. Mr. Tavoularis drives him back to the luncheonette and he goes home, to his house, not his brother-in-law's house, his house, his brother-in-law waits there. Okay, so at one prior occasion Mr. DiRienzo said, "I went to my brother-in-law's house. Sometimes minor details escape us, but I don't think he ever contradicted himself about the fact that that Tuesday afternoon he went to a house with Anthony Tavoularis in Howard Beach and picked up a hundred thousand dollar treasury bill.

I think he testified further that he wrote
the serial number down and kept it on a piece of
paper, put the bill back in the pocket of his
jacket, hung the jacket up in the closet and later
on that night he returned back to Mr. Tavoularis'
house after midnight, nobody was home. They walk up
the stairs, they go into a little alcove on the side,
a nice little private conspiracy.

Joe tells Mr. Tavoularis, "You've got yourself a deal."

The next day, Sunday, I guess even people who try to move treasury bills take a day off, and Mr. DiRienzo testified that he tried to call the FBI Sunday night, when somebody answered he hung up. Maybe he had second thoughts.

The next morning he didn't have second thoughts because he picked up the telephone and he calls the FBI and he talks to them and they give him another number and he dials that number and he's talking to a Secret Service agent on Monday morning.

I ask you, is that something a greedy person would do? Here is an opportunity to make something like four points on an amount of bills in the face value of 2.7 million dollars. Would a greedy person pick up a telephone and call the Secret Service and say, "Hey, I've got something to tell you"?

Is that consistent with the motives that he's been painted with by Mr. Newman?

So what happens? We have the meeting on Monday night with he agents and then he sees Mr. Tavoularis again Tuesday morning. Where is it? Once again at Frank's Luncheonette. I guess Mr. Tavoularis felt

safe inside of Frank's Luncheonette, he didn't have
to worry about whether there were any bugs in there
or whether strange people would come in there and overhear the conversation, because it was a folksy place,
as Mr. Newman described it once in the questioning:

"You know everybody in there so you don't have to worry when you are talking about whether somebody is in there that you wouldn't want to have hear one of the conversations about treasury bills."

So what happens? Mr. Tavoularis shows up in the morning, he says, "I don't have the package yet, I'll be backlater and I'll have the package."

He comes back at 12:30, around lunchtime, there was a lunch crowd in there and he doesn't have the package. At that time, Mr. DiRienzo says to Mr. Tavoularis, after having had a meeting, a telephone conversation in the interim with Secret Service agents, he says: "Look, how about meeting my buyer in Manhattan?"

Mr. Tavoularis says, "No, I don't want to go to Manhattan." I believe Mr. DiRienzo testified that the reason he gave was because the traffic was too heavy. I don't know how I could make that logical to you, ladies and gentlemen, it does seem -- I'll

admit to you it seems a little preposterous that the reason Mr. Tavoularis gave Mr. DiRienzo about not going to Manhattan was because the traffic was heavy, but maybe when you are riding around in a car and you've got three million dollars worth of treasury bills in your possession you don't want any unforeseen or untoward things to happen, like agents, or things of that nature.

Maybe you don't want to keep your buyer waiting either, if you have to go over to Manhattan and you end up in a traffic jam and he's standing out on a corner willing to pay 11 or 12 points on a three million dollar deal.

Maybe Mr. Tavoularis' motive for not going to Manhattan was greed. At any rate, he comes back at 12:30 without the bills, they have their conversation, he leaves.

I think you should also recall at one point
Mr. DiRienzo had gone to use the phone in Frank's
and Anthony Tavoularis said, "Don't use the phone in
here, use an outside phone."

Mr. DiRienzo testified he went out, used the phone, had a conversation with agents, met those agents outside a White Castle down on Atlantic Avenue.

Summation - Dougherty 1000

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They drove around for a while, he told them what had happened. He told them what he thought was going to happen, and the next thing you know he's back at Frank's Luncheonette with Anthony Tavoularis and they are supposed to be going to get the package.

So far I ask you: Is there anything about that tale that is irrational or unbelievable?

Mr. Newman says, why have Anthony Tavoularis in here in the first place, you've got Stuart Norman who was found with the bills on him, you have Joseph DiRienzo who had the buyer, why do you need Anthony Tavoularis?

Now, ask yourself that question when you review Mr. DiRienzo's testimony. He started the conversation, he suggested the bills, he knew the amounts, he knew where to go get them. Joe DiRienzo didn't bring Anthony Tavoularis into that caper, Anthony Tavoularis put himself into the middle of that caper.

Parenthetically, I think you might also consider the other arguemtns, the one by Mr. Daniels and the one by Mr. Poerio. Mr. Daniels said, "Oh, Joe DiRienzo, Stuart Norman, I never saw any of these guys. I never had a conversation with Stuart Norman in a bar about stolen securities, I never met him at a

JB flws.

diner."

Mr. Poerio says, "I don't know from nothing."

So apparently, everything that ever happened that you heard testified about here by Joseph DiRienzo and Stuart Norman is part of a scheme that I think Mr. Newman -- I will borrow his phrase -- used of, "Let's make a deal."

Is that believable?
(continued next page.)

MR. DOUGHERTY: All right. Mr. Tavoularis comes back about 2:00 o'clock with a guy named Arnie.

I believe DiRienzo testified that they then went in a car and went over to the same house they had gone the first time to get the sample. And Arnie and Mr. Tavoularis go upstairs. Mr. DiRienzo sits down in the car.

And while they were up there, which I think
he said tookabout a half hour, he got out of the car
and walked by the house and he noticed the name on
the door. And the name was Berman.

And they come down after about a half hour .

And Mr. Tavoularis and Arnie get in the car,

Mr. Tavoularis says, "We don't have the package."

Mr. DiRienzo said, "My buyer is going to call the whole thing off."

How many times do you want to hang this guy up?

And might I also add a question to that? How many times can Joe DiRienzo take a chance on being discovered?

Three times he has a meeting with Anthony

Tavoularis on Tuesday when he is supposed to get the

package. Each time the package is never delivered.

### Summation-Dougherty

What do you think Mr. DiRienzo is experiencing at this time? Do you think he might be a little afraid for his own personal safety.

MR. NEWMAN: Objection, your Honor please.

THE COURT: I think it's argument.

MR. DOUGHERTY: All right.

So they come downstairs. Joe is told he doesn't have the package. They drive him back into the luncheonette. And Tavoularis says, "Meet me at Tom's Bar at about 6:00 O'clock and I will tell you what the deal is."

He never told Joe DiRienzo to meet him at 6:00 o'clock at Tom's Bar and I will give you the package. Even if he had, I'm not too sure whether Mr. DiRienzo would have believed him. Because on three earlier occasions that day Mr. Tavoularis promised to come across and he didn't.

And I believe there is testimony in the record that Mr. DiRienzo then attempted to call or did call the Secret Service and told them that he was supposed to go over to Tom's Bar and find out what the details of the deal were. Not to take delivery of the package.

All right. So then we are in Tom's Bar about 6:000 clock, 6:30 that Tuesday night. And Tavourlaris

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is in there with a guy, a Joe DiRienzo, and later
discovered to be Stuart Norman. And he says, "This
guy has got the bills. Let's go to your buyer's house."

At this point I believe Mr. DiRienzo testified that he tried to contact the Secret Service on the telephone; that he couldn't reach them; that he talked to his wife to kill some time; and then went back and told him that his buyer was having company, and anyway he couldn't come up with the bread to buy the bills that night; and that he would wait for them the next day until about noontime at his house.

So now we are back in Frank's Luncheonette again on Wednesday morning. Tavoularis telephones Mr. DiRienzo about 7:30, says, "Be over Frank's at 9:30, 9:00. I will have the package."

When Joe gets there, he sees Mr. Tavoularis and Mr. Norman toward the back of Frank's by the telephone. Frank Tusa was in there serving behind the counter.

Mr. DiRienzo and Mr. Norman then go back to the men's room, which I believe Mr. DiRienzo described as a very small room. In fact, he could only get in there by himself. Mr. Norman stood in the doorway of the men's room. He held the bills up to the light. He

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#### Summation-Dougherty

ruffled them with his thumb, noted some of the denominations, gave them back to Stuart Norman and said, "Put it under your shirt."

They come out from the back. Mr. Tavourlaris says, "Let's go."

They go out to his car. Mr. DiRienzo takes his jacket off, puts it over his arm, and they are arrested.

Now, let's consider some of the inconsistencies like, for instance, the raincoat. I asked Mr. DiRienzo on direct examination whether he had that raincoat on that Wednesday. And he said he didn't. He said he took it home Tuesday night after he got it from one of the agents. And nobody knows what happened. And he didn't have that raincoat with him on Wednesday.

If he said he had it in the past, he made a mistake. He did remember a raincoat. It was supposed to be the signal, but he didn't take that raincoat that Wednesday. Instead he used a sport jacket.

(Continued on next page)

JB:GA T5 R2 PM<sup>2</sup>

And I think Mr. DiRienzo brings us up to about May, and we are at the Aqueduct Racetrack. And he is standing around near the \$50 window. He had gotten his reward from Morgan Guaranty around Easter time of 1970. And he was having a good time. And he was at the track And who does he meet there but Anthony Tavoularis. And what does Anthony Tavoularis say to Mr. DiRienzo at that meeting?

"Don't worry about it. We've got nothing to worry about. The bills were found on Stuart Norman."

Then they go into the cafeteria, and there is a fellow named Jimmie that sits down with Mr. DiRienzo and Mr. Tavoularis at the table. And what does Jimmie say in place of Mr. Tavoularis?

"A lot of guys lost a lot of money on this deal, and we want to find out who ratted us out."

What does Mr. Tavoularis say about that? Does he say, "What are you talking about? I don't know from no Treasury bills."

Mr. Tavoularis can't be heard from.

Then Mr. DiRienzo testifies that he had another meeting at a diner. And how did that meeting come about? He was coming out of his house one day and there was Anthony Tavoularis sitting in his car across the street.

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And he said, "Come on, take a ride with me. I want you to meet somebody."

And they go to this diner. I forget where Mr. DiRienzo said the diner was located. And he meets a fellow there by the name of Vinnie. And I believe he described this fellow Vinnie in July of '70 to the Agent who took his statement, as about six, one, 170, 180 pounds 38, 39 years old, at the time, dark hair, and a pinkie ring.

And he says he sits down at a table in the diner that day, and he has a conversation. And Vinnie says, "Do you have any idea who ratted us out?"

And I think Mr. DiRienzo testified, "Have you thought about Stuart Norman?"

And Vinnie says, "Well, we are taking that into consideration. There are a lot of guys waiting tofind out who ratted us out. And it goes without saying that when the guy gets on the stand, we'll know who it is, and we will take care of it."

And he's looking right at Joe DiRienzo when he says that. And Joe DiRienzo is looking right back at him, square in the eyes. Never saw Vinnie again. Doesn't remember ever seeing him before. But when he's shown a spread of photographs on two separate occasions, he picks

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# Summation by Mr. Dougherty

out Vincent Poerio's photographs, which you have a right to take into the jury room with you, which are years apart. Never once did he make a mis-identification.

Never once did he identify anybody else but Vincent Poerio as the man who he remembered being Vinnie in that diner.

I asked Mr. DiRienzo, "Were you nervous when Vinnie said, 'We want to find out who ratted us out.'"

Do you remember his answer? He said, "Yes."

I said, "Are you sure about that?"

He said, "Yes. I was nervous."

And then I believe Mr. Light asked him a question,
"Are you 100 percent sure about your identification of
Vincent Poerio?"

And what was Mr. DiRienzo's answer?

"I will answer that by the eyes, yes. By the eyes, I am 100 percent sure."

All right. Then what happens? Then we have a meeting about a week later. Mr. Tavoularis called Mr. DiRienzo on the telephone and says, "Meet me at the diner."

And Joe DiRienzo goes to the diner. And as he gets there -- And Tavoularis is in his car, and he gets out of his car, and they stand by a tree outside the

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diner, and the conversation ensues. And in the conversation, Mr. Tavoularis says, "I want you to set up a meeting with somebody."

And he names a person.

Mr. DiRienzo says, "Well, it will be pretty tough to get to see him."

And Mr. Tavoularis says, "I don't care. You can see him. And I want to see him. Somebody ratted me out, and I want to find out who it is. And when I find out, I am going to bury that guy."

Then a week later Mr. DiRienzo is telling this whole sequence of events to the Agents. And Mr. Light makes much of the fact that there was never any description or mention made of Vincent Poerio's eyes.

And I asked Mr. DiRienzo on redirect examination, "How did this whole subject of eyes come up?"

And I couldn't identify them from the face. And I didn't want to make a mistake. So I told Mr. Barlow when I picked out the photograph, that it was based upon the guy's eyes."

And he was asked, "All of your identifications, were they all based on the fact that the eyes were the same," and he said, "Yes."

# Summation by Mr. Dougherty

As far as some of the other things that Mr. Newman brought to your attention, the fact that there was an Exhibit C, a note about \$525, Mr. DiRienzo never denied that he sent that note. And you can take that inside and read it. Fow does it begin? "You owe me \$525."

Does it say anything there about, "I want \$525," or, "You better give me \$525."

It says, "You owe me."

And I asked him how did Mr. Tavoularis come to owe you, and he said, "I lent him a thousand dollars at the track."

There's never been a denial.

There's been much made of the fact that at the last trial Mr. DiRienzo was shown the note, and the first time he said he never sent that. And I asked him on redirect examination, How long a period of time could there have been between the time he was shown the note at that trial, and the last time he had seen it. And he rounded it off to about nine or ten months.

Then Mr. Newman said, "Could it have been possible that maybe it was two months or three months"?

And he says, "Sure, it could have been possible."

I didn't ask him, though, whether it was possible.

I said, "About how long could it have been?"

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He said, "Nine months, ten months."

And then, when he was shown the note here, he didn't deny it. That's his note. What's in there, he embraced it.

And you can take that note, and you can compare it against the tape. I am not afraid to have you listen to those tapes.

Think about the circumstances surrounding those tapes, though. Both phone calls Mr. Tavoularis made out. On both occasions he knew he was about to record a conversation. And both of those conversations, the voice identification of Mr. DiRienzo was made by his own son.

And both times Mr. Tavoularis sees fit to say,
"I am innocent."

Is that what we are here about, those tapes, or about whether Mr. DiRienzo made a phone call, or whether or not Mr. Tavoularis owed him \$525, or whether Mrs.

Tavoularis chased a car down the street on a rainy Sunday afternoon?

Is that what we are here for? Or are we here to determine whether or not Mr. Tavoularis, Mr. Daniels, and Mr. Poerio are Guilty of possessing three million dollars worth of Treasury bills?

Sure, the testimony of the Tusa's and Mrs.

# Summation by Mr. Dougherty

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Tavoularis and Mr. Messineo is uncontradicted because it had nothing to do with the -- or tell us about the events of March, 1970, except, I think, in the case of Mr. Tusa, who said that he recalls some business about a key being exchanged between himself and Mr. Tavoularis or Mr. Norman. And I think Mr. Messineo also said that he was asked on one occasion to leave the key for the premises at John's Bar next door so that Mr. Norman could get his pool table out.

And you remember I asked Mr. Norman whether he ever remembered having a conversation with Mr. Tavoularis on that morning, March 4th, about getting his pool table.

And he said, No. Pure and simple, there was no such conversation.

In fact, Mr. Messineo was a little hazy about when he might have left the key off. And when he was pressed by Mr. Newman, he finally got around to saying, "Probably two days before the arrest in this case."

Mr. DiRienzo made no bones about the fact that he hoped for a reward here. He's got nothing to hide. He earned that reward. He went out on a limb. He stuck his neck out. He did business with these people. He subjected himself to their threats later on.

Don't you think he earned that reward?

R3 fls 25

Let's talk about the fingerprint expert. Do you recall he testified he was in charge of all fingerprint training for the FBL; that he was with the Bureau for twenty-four years; and that he spent that entire time in fingerprint identification. He never did anything else, just identifying fingerprints.

Do you recall that he was shown Government Exhibit

6, I believe, which was the Treasury bill, and he was
asked, when he examined it, and he said he examined it
in March of 1970, the very month that the arrests in this
case were made, and the bills were recovered.

And I asked him what happened with that bill, and he said, "I developed a latent fingerprint of value for identification purposes."

I think you should keep that phrase in mind, because I think it's an important phrase.

He was asked on cross-examination, "How many latent fingerprints or palm prints or partial prints were developed?"

And I believe he gave you the answer, twenty-five.

Was he asked how many latent fingerprints of value for identification purposes were developed?

He said, No. He was never asked that.

(continued on next page.)

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He was asked how many prints were developed. He said, twenty-five.

Do you remember some of his reasons why you wouldn't find prints on a particular Exhibit? Namely, it might be handled in a particular fashion so you wouldn't leave your prints on it. Or perhaps the party might be wearing gloves, or the Exhibit would never have been taken out of an envelope, or somebody else would handle it all other times, like Stuart Norman.

And then he gave a technical reason that perhaps there was no oily residue on the surface of the ridges of the skin which would leave an imprint on the porous paper.

And I think somebody suggested to you in their

Summation that at the time he looked at the latent fingerprints and compared it, he had an arrest card of the

defendant Daniels that stemmed from this particular

case. And it was suggested to you that perhaps his

identification was the product of some suggestiveness,

in view of the fact that the thing he was using for comparison was the very defendant's known fingerprints.

If that's the case, I ask you, how come we don't have testimony by Agent Cassen that Anthony Tavoularis' prints are on there, or that Vincent Poerio's prints are

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on there.

He told you that they did a comparison, and there were no prints for those people.

Where was the suggestion? Where was the suggestiveness?

I submit to you that the defendant Louis Daniels print is on that bond because he put it there.

And I submit further that perhaps the reason why Anthony Tavoularis' prints aren't on there is because he saw fit to see other people put their prints on, and not him. And perhaps the reason why the defendant Vincent Poerio's prints aren't on there is because every time he got rid of the package, it was in an envelope. It was in a package. It wasn't handled loosely. He never took it out of the package. There is no testimony that he handed the bond directly to another person from himself. It was always a package.

By the way, getting back to those conversations with Jimmie at the racetrack, and with this Vinnie at the diner, you remember I asked Mr. DiRienzo whether it was possible that Jimmie and Vinnie could be the same person. And he said, "No, they're not the same person. Jimmie was about sixty. Vinnie was thirty-eight, thirty-nine years old."

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## Summation by Mr. Dougherty

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I believe the page of the transcript is 547, where Mr. DiRienzo testified, "Jimmie didn't look anything like

Vinnie."

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And once again, at page 536 and 537 of the tran-

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script, Mr. DiRienzo says, "I am 100 percent sure that

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Mr. Poerio was Vinnie by his eyes."

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All right. Now, let's take a look at Stuart

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Norman. Married, has a family, operates a vending

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machine business,

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He testified he met the defendant Daniels while

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making a collection from one of his machines at one of

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the bars. I think he said it was the Williams Brothers

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Bar; and that on one of these occasions when he was mak-

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ing the collection, Mr. Daniels said, "Interested in

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stolen securities?"

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I think Mr. Norman pinpointed the time about late

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MR. DOUGHERTY: (continuing) Mr. Norman said at that time, "I'm not interested," but then there came a time when Mr. Berman comes into the picture. The elusive Mel Berman. Mel Berman was testifying, subpoenaed to come in and testify at the last trial, and never made it to the court house out in Westbury. The Mel Berman who I arranged to come into my office, who never showed up. The Mel Berman who I submit moved within the last few weeks of this trial and left no forwarding address.

All of a sudden, here comes Mel Berman, ready to give witness to the truth. His version of the truth has no resemblance to what you've heard here whatsoever. He doesn't know Mr. Poerio, he doesn't know Lou Daniels. He knows Stuart Norman.

cause he was trying to take over one of the bars where I had machines in there. He was having some problems with licensing, and some of the bills had to be paid, and I lent him some money." I think it was worth your attention. Well, that's pretty hard to believe when you've got a guy whose operating a business that's very close to the line. It's not very hard to believe when you've got a guy who has a business that is shaky, when he wants to keep his machines, locations, doesn't want to lose

Summation by Mr. Dougherty

his locations, because it's money out of his pocket.

He lends money to Mel Berman, except Mel Berman never

pays back.

6 Mr. Norman, "I can use a good shot in the arm right now.

Do you know where I can make a killing?" Mr. Norman

goes looking for Mr. Daniels with Mr. Berman. They end

Then there comes a time when Mel Berman says to

up at Mr. Daniels' apartment, and there's conversation

about Treasury bills. The first time we hear mention

by Mr. Daniels, and the amount being three million dol-

lars.

He says, "Let me go find out if they're still available." He goes to make the phone call, and comes back and says, "They're available." Stuart Norman goes back to tell Mr. Berman they're available, and Mel Berman says, "How about a sample?" Then you hear testimony that Lou Daniels contacts somebody about getting a sample to Mel Berman, and Vinnie shows up.

Vinnie has conversation with Stuart Norman. They leave Lou Daniels' apartment, go downstairs.

Mel Berman is downstairs. Vinnie and Mel Berman have a conversation in the presence of Stuart Norman.

They go back upstairs. He says, "Look, I'll let go of the sample, but I don't want it to go too far. I want to



Summation by Mr. Dougherty

Gentlemen, the maturity date of the bills, I believe, are April 2 and April 9. I think Mr. Norman says that, "We're now into the month of February, 1970. We have two months to the maturity date of the bills." Perhaps that some pressure to get rid of the bills. Perhaps there were questions raised if the bills weren't fenced until after the maturity date. Maybe they weren't using \$50,000 Treasury bills as samples any more. Maybe they were trying to fatten the bait on the hook, and went up to \$100,000. Maybe there was more than one exchange of this sample here.

Anyway, you heard testimony from Mr. Norman that the next day he picks up Mel Berman, all to the house, gets the sample back from Mel Berman, and he goes to Daniels and he gives it to him.

Then we come into the final chapter, when they're about to have their deal. He meets Vinnie and Daniels, and he gets the package from them on a Tuesday night at the bar, I think, on Crossbay Boulevard. He goes over to Tom's Bar. Who does he see there but Anthony Tavoularis and a fellow he had never seen before, but whom he now knows as Joseph DiRienzo.

Mr. DiRienzo goes to a phone, makes a telephone call, comes back, says, quoting Stuart Norman, "My buyer

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## Summation by Mr. Dougherty

has company. Besides, he can't get the money, he doesn't have the money now. He'll wait for us tomorrow at 12:00 o'clock." So, we're right back in the square of Frank's Luncheonette the following morning, except that there are a few additional pieces of the puzzle Mr. Norman adds to the events of March 4; namely, that on that morning he went over to a diner, and he saw the defendant Lou Daniels, and this fellow named Vinnie, and he got the package from them, and he then took it over to Frank's Luncheonette on East New York Avenue, and he sees Anthony Tavoularis and Joseph DiRienzo, and they go into a back room, him and Mr. DiRienzo and they look at the bills, and Mr. DiRienzo tells Mr. Norman to put them under his shirt, and then somebody, I recall it being Mr. Tavoularis, perhaps Mr. Norman didn't recall who said it, but somebody says, "Let's go," and they're on their way out to Mr. Tavoularis' car with 2.7 million dollars in Treasury bills, and the Secret Service men move in and make the arrest.

Where is the material difference between Mr.

Norman's story and Mr. DiRienzo's story? I ask you:

Other than for the fact that Mr. Norman puts Mr. Daniels

and Mr. Poerio in this case, and Mr. DiRienzo freely admitted other than from the one time he had met Vinnie

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## Summation by Mr. Dougherty

in the diner, he had no dealings with him involving

these bills, and he never saw the defendant Daniels.

If they were going to come in here, concoct a story, wouldn't it be more believable for Mr. DiRienzo

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to say, "I saw Daniels, Vinnie. We were all together

in a back room, smoks-filled room somewhere." He didn't

say that. He said he had all of his dealings with Stuart Norman, and Anthony Tavoularis. Stuart Norman comes in

here and says, "I had most of my dealings with Vinnie

and Lou Daniels."

I think somebody indicated that Stuart Norman has or had a good reason to come forward and testify, because he was caught dead-to-rights with the bills.

They were under his shirt when he was arrested. There was no way out of it for him. I think there's no disputing the truth of that statement, he was caught dead-to-rights, and he paid for it with two years of his freedom.

I asked him, "When you pled Guilty, when you offered to cooperate, did anybody say your testimony would
mean a reduction in your sentence?" He says, "No." When
he came up for review by the Board of Parole, I think he
was asked on cross-examination, did he know whether any
letters were written on his behalf by the Government.
He said, "Yes." In fact, one letter was written before

Summation by Mr. Dougherty

his first eligibility for parole, and it was denied.

He put two years in jail. He had no prior con-

victions.

Do you remember he was asked on cross-examination whether he remembered the day he was sentenced, and whether he thought that was an important day, and he said he couldn't remember, and Mr. Newman said, "You can't remember the day you were sentenced?" He said, "I'm trying to forget it." Do you think it's easy for Mr. Norman to come in here and resurrect that whole tragic episode of his life? Do you think he looked

told his story? Do you think he looked like the kind of hard individual who would risk committing perjury

after spending two years of his life in jail?

especially courageous when he got up on the stand and

Mr. Chrein said, "This is a big deal. We're talking about three million dollars worth of Treasury bills." Who does he hear about it from? Lou Daniels, a bartender. I ask you where else would a man like Norman hear about this? Where else would he get involved: He doesn't have no prior brushes with the law. He's got a wife and he has three kids, and a vending machine business which he managed to keep together for two years he was in jail.

Where else would he hear about it except from a man like the defendant Daniels? In a casual conversation during one of his collection stops at a bar?

Mr. Light says, "Norman remembers Vinnie with a beard in March of 1970, and Joe DiRienzo doesn't say anything about a beard in July." It almost deserves no explanation. There's a four-month gap between the last time Stuart Norman says he saw Vinnie, and the first time Joe DiRienzo says he saw, and if Vinnie felt like shaving off his beard, was there anything to stop him? Did he have to have a good reason for shaving off his beard?

At the time Vinnie had this conversation with

Joe DiRienzo, coffee in the diner, do you recollect the

testimony that he had his hand up over his, covering his

mouth at the time, and it was because he had his hand

over his mouth that Joe DiRienzo remembers he had a

pinkie ring? I think Mr. Light made much of the fact

when I asked Mr. Norman to identify anybody in this

courtroom who looked like Vinnie. He said he looked at

Mr. Newman, and he hesitated for a while. Why shouldn't

he not recognize Mr. Newman as Mr. Newman? He spent at

least two days with Mr. Newman in Westbury, at the court

house, while Mr. Newman exposed him to cross-examination.

R2 fls 25

## Summation by Mr. Dougherty

Of course he knows Mr. Newman, who he is. He didn't point Mr. Newman out. He pointed Vinnie Poerio without his beard. That identification is uncontradicted. It's based on at least five meetings he had with Vinnie at the Diner, Lou Daniels' apartment, a Spanish bar, another bar across Crossbay Boulevard. How much more do you need to identify somebody?

Meetings that were concerned with, Ladies and Gentlemen, the exchange of three million dollars in Treasury bills. This is no ball game of monopoly we're playing.

There's also some mention made of the fact Mr.

DiRienzo appeared confused about the conversation he had with Vinnie and the conversation he had with Jimmie. I submit to you that the only confusion he might have had was about whether or not Jimmie said there are a lot of guys waiting to find out who ratted them out, or a lot of guys who lost a lot of money, but I asked Mr. DiRienzo on redirect examination, "Is there any confusion you had that conversation with Vinnie in the diner?" "No."

"Is there any doubt what Vinnie said when you were in the diner with him?"

(continued on next page.)

Then we have the part about the missing

FBI reports. I think Mr. Light, too, saw fit to

resur ect the name of J. Edgar Hoover. Well,

perhaps J. Edgar Hoover -- because an FBI agent lost

the report, but I submit that is not unbelievable.

It happens. Even the Government, with all its

resources, as Mr. Newman pointed out, loses things.

The fact when he mentioned the fact after Me; Berman

was paraded in here this morning. the Government all

this morning produced people coming out of the

woodwork with tremendous resources. Do you know

what that resource was? A ten-cent liece to make

a telephone call.

He says, "What about the cassette I gave to the Government? They could have taken all sorts of tests." What business is it of mine to come in here and prove to you that is not Joe Di Rienzo? I'm not offering that tape to you. That is not part of my case. That is not evidence of the crime in chief.

He says, "It's not one piece of objective evidence in this case." When I asked Mr. Newman what kind of evidence do you need to convict, do you think Vincent Daniel's fingerprint got on

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that by accident; if you think Mr. Di Rienzo and Mr. Norman got together, concocted a story, lied, don't convict. If you think Mr. Norman identified Mr. Porrio or Mr. Newman, or that six meetings with the guy when you talk to him about Treasury, three million bucks? Isn't it enough for identification? Don't convict him. If you want to believe Mel Berman, that pyramid of virtue and honesty, then you believe him.

I submit if you believe them, we can pretty much bet J. Edgar Hoover will roll over in his grave.

We had the part about the charge that was pressed by Joe Di Rienzo's cousin on the \$900 check. Let's examine that story that he told.

First, he had an agent out of state agree to backdate a policy, a 72-year-old relative can get insurance. An agent who wasn't even licensed to sell insurance in the State of New York. He gets the check. All of a sudden when the relative decides to make inquiries, the agent doesn't want to get in hot water. He doesn't want anybody to know he's selling insurance in the State of New York ghwn hw's not licensed to do so. He doesn't

anybody to find out he is backdating policies, so he says, "I don't know anything about that."

For whatever other reasons. Joe Di Rienzo's cousin decides to make an issue out of it.

I ask you, ladies and gentlemen, have you ever heard of bad blood between relatives? Have you ever heard of family disputes, family arguments, family grudges? Isn't possible that Joe Di Rienzo might be a victim of such bad blood? He never denied that he did what he did. He never denied he went before a judge, pled guilty, says heatook that person's \$900. He wasn't asked for your forgiveness. He told you the way it was.

What are we left with? According to the defendant, we are left with Joe Di Rienzo, the liar. Robert Hazen, the fingerprint expert. Stewart Norman, the guy who's covering up for the real big shots, the real master mind behind this plot, Harold Kiner, who is testifying from dried up old records from 1969, and Dick Geoghan, and they say that's not enough. They say, "Take all those witnesses and treat them just exactly as I described them to you and throw this indictment out."

I think that's characteristic of their defense even the witnesses who have no motive here tolic against these defendants; even a Harold Connor or Robert Hazen, even those witnesses aren't good enough. Yet they are asking you to take you at face value the testimony of five or six people who talk about things that happened some two and a half years after the events that are charged in the indictment and don't have any knowledge at all of what happened in February or March of 1970 with regard to the Treasury bills.

You should also be aware of the charge that

Judge Platt will give you about aiding and abetting.

He will tell you that whether they held the bills --

MR. LIGHT: I would object to Mr. Dougherty's definition or explanation of the law.

THE COURT: All of you have engaged in it to a certain extent. I will allow it for a few minutes.

MR. DOUGHERTY: If you find any of these defendants did anything to make the effort succeed of possessing and transferring or changing these Treasury bills, whether it was to drive somebody to a particular location with knowledge of what

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was about to take place, or to have a meeting or to hold a bill or take it back, or to secrete it or whatever --

MR. NEWMAN: Objection to "or whatever."

MR. DOUGHERTY: Or that nature --

THE COURT: I will instruct you on the law.

He is just giving you illustrations.

MR. DOUGHERTY: That you should take that into consideration when you decide whether or not these defendants are guilty.

Nobody ever told you when you came in here
the first time that your job would be an easy one.

I submit to you that it is not. Remember this
much: That you're not sitting there acting as gods
facing final judgment on these people, but that you
are here to judge their acts and that the testimony
that you heard has to with their acts amd what
reflections those acts have on their intent or
knowledge at the time they engaged in those acts
and that after due deliberation in the jury room,
it is your decision that these defendants are guilty
of the crimes charged, then come in here and do
your duty with no reservation, with no guilt, and
with the knowledge that you are serving the cause

of truth in this case as all juries do in every case.

Thank you.

THE COURT: Ladies and gentlemen of the jury.

we have reached the end of summations. I am not

going to instruct you on the law tonight and keep

you here all night. I am sure you are all de
lighted to hear that.

We will have the charge the first thing tomorrow morning at ten o'clock. After that, the case will be given to you.

In the meantime, until that point in time when the charge has been given to you and the case is yours, for deliberation, do not discuss the case. I think you know about that, what that means.

I will see you all tomorrow morning at ten o'clock.

MR. NEWMAN: Might I have a few minutes of the Court's time after the jury has left. sir?

THE COURT: Yes.

(The jury leaves the courtroom.)

May Inddress the Court? If your Honor please, rather than interrupt Mr. Dougherty's final arguments, I elected to list a couple of objections which I would like to place on the record, Judge, in the absence of the jury.

I respectfully submit that Mr. Dougherty put his credibility in issue here before this jury, which is prohibited by the case law, when he made remarks such as "bad blood between families."

His story is true, referring to DiRienzo.

In referring to Mel Berman, he referred to him as

"A pyramid of virtue, a pyramid of virtue and honesty,"

and there was no testimony in the record concerning

any criminal background of Mr. Berman on direct or

cross-examination.

I believe he said, "If you believe him," referring to Mel Berman, "J. Edgar Hoover would roll over in his grave," then, in referring to Mr. Stuart Yorman, your Honor, he said he had no prior brushes with the law.

I respectfully submit that that is not true based on the 3500 material that we received. He had been arrested but from the length of time and the disposition of the case we were prohibited from bringing that out on cross-examination pursuant

to your Honor's ruling under Pucco.

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THE COURT: I didn't make any ruling with respect to Stuart Norman, I never saw his record.

I only made a ruling with respect to DiRienzo.

MR. NEWMAN: I withdraw that, you are correct.

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You laid down guidelines for DiRienzo.

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THE COURT: I said a 30 year old conviction, which you wanted to put in against DiRienzo, was too ancient.

MR. NEWMAN: That's not a correct characterization, I didn't want to put it in, most respectfully. I am saying to your Honor that Stuart Norman had been arrested and Mr. Dougherty --

THE COURT: I have no record of that, and there was nothing in the trial that showed that he had any record whatsoever.

MR. NEWMAN: That's not the question, Judge. Mr. Dougherty has a responsibility as a prosecutor not to make misstatements such as that, Judge, when in fact it is not so. A prior brush with the law, Judge, indicates to me something significant, that he's been arrested. It's not that Mr. Dougherty said he had no prior convictions, which would be true.

THE COURT: I have no evidence as to that.

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MR. NEWMAN: All right, Judge, I respectfully submit that that was said.

THE COURT: I have no evidence of this, Mr.

Newman. I don't know how you can call on me to

make a ruling with respect to something that I have
no evidence on.

MR. NEWMAN: I respectfully submit that the government prosecutor has a certain obligation, sir, and it is within his care and knowledge that in fact Mr. Stuart Norman had been arrested. He furnished that to us in the 3500 material but we couldn't use it because it was dismissed.

THE COURT: I don't know anything about it.

MR. LIGHT: Your Honor, with all due respect, with inquiry of Mr. Dougherty --

MR. CHREIN: I believe to express Mr. Newman's point somewhat differently, the objection is not addressed to your Honor but rather to the nature of the summation. The prosecutor was aware of the fact of this arrest but yet he told the jury something which was not in evidence but something which was equally additionally untrue, and that is what Mr. Newman is complaining of, if I interpret it correctly.

MR. DOUGHERTY: I believe I asked Mr. Norman

on redirect whether he had any prior convictions and he stated he didn't. He did have a charge in 1960 but that was subsequently dismissed. If your Honor would wish to charge the jury that --

under those circumstances where the charge is dismissed constitutes a brush with the law or not. It depends on the circumstances. There is nothing in the record and I have nothing before me which indicates that he did have a brush with the law. There have been plenty of people who have been wrongly arrested that I would think would regard themselves as not having had a brush with the law.

MR. NEWMAN: If your Honor please, I respectfully object, what he did there was make a misstatement of fact before the jury. I respect your Honor's
ruling. I respectfully except to it. Mr. Dougherty
put his credibility in issue when he said he never
showed up at Mr. Dougherty's office, Mel Berman.

THE COURT: I think he admitted he did.

MR. NEWMAN: No forwarding address.

THE COURT: He admitted on the stand he didn't.

MR. NEWMAN: That's correct, but he said he made phone calls.

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THE COURT: He admitted that he had gotten calls. Mr. Berman admitted that he got calls and --

MR. NEWMAN: I know that, but he stated he made phone calls.

THE COURT: He also stated he never showed up. How does he put his credibility on the line?

MR. NEWMAN: I respectfully submit that he did, Judge. In addition to which he stated that Mr. Berman left no forwarding address, and there is no evidence in the record of having moved --

THE COURT: He admitted he moved.

MR. NEWMAN: But he didn't say a word about no forwarding address, respectfully, Judge.

THE COURT: I don't know about that.

MR. NEWMAN: He put his credibility in issue further when talking about the resources, he said that he got these people here by making a ten cent phone call. That's him testifying and he never got up on that witness stand to testify that that's how they came here and there is nothing in the record to indicate that.

THE COURT: You made the comment that he had unlimited resources to get people down here and the fact is that he went out of the courtroom, he came back a couple of minutes later, and I suspect that's -- if he even spent ten cents, he's crazy, he

1	6	probably should have called from his office. I
2		don't think that is unreasonable.
3		MR. NEWMAN: That's your opinion.
4		THE COURT: The United States Attorney picks
5		up the phone and calls the FBI every day of the week
6		to come and testify.
7		MR. CHREIN: That is testimony by the pro-
8		secutor in connection with his summation. He's
9		referring to facts, not evidence.
10		THE COURT: So did Mr. Newman when he chal-
11.		lenged the method by which they got an FBI Agent
12		down here.
13		MR. NEWMAN: May I continue, sir?
14		THE COURT: Go ahead.
15		MR. NEWMAN: I sumbit he further put his
16		credibility in issue when he stated, "I guess Mr.
17		Tavoularis felt safe in there," in referring to the
18		luncheonette. I respectfully submit that he put his
19		credibility in issue when he said
20		THE COUPT: That is argument.
21		MR. NEWMAN: I am sorry, sir, I didn't hear
22		you.
23		THE COURT: That is argument.
24		MR. NEWMAN: Okay, that is your opinion,
25		most respectfully. In addition to that, sir, when

talking about the defense, he said this is characteris-tic of the defease, referring to the whole defease together, which was not the situation here at all. Of course I am at a disadvantage since I don't have the minutes in front of me, I'm trying to do it with quick notes, and he then said in characterizing the defense, that what we seek here is that the indictment be thrown out. That is not what we seek at all. We seek 

That is not what we seek at all. We seek what is due to us under the law, that they be found guilty beyond a reasonable doubt.

Nobedy is asking to dismiss indictments.

That is not the basis of a verdict here. I think
he's unfairly characterizing to the jury what we
are requesting of him.

THE COURT: I think it's another way of -- continue.

MR. NEWMAN: In addition to all that, on at least two occasions he put the non-testifying defendants' character in issue, referring to Mr. Tavoularis, when he referred over and over to him as his motive being greed.

Motive is an issue when somebody takes the witness stand as to their motive in testifying.

But this put character in issue, contrary to all the

cases, including Michaelson against the United States.

THE COURT: I don't think you are right on that subject. He characterized the statements of Mr. Tavoularis which were related through the other witnesses, Mr. --

MR. LIGHT: Your Honor --

THE COURT: Wait a minute -- I forget the witness's name, but anyway he characterized the statement as related by him as one that indicates greed. I think that was fair comment on the evidence.

MR. NEWMAN: Judge, the final remark that he made was that the verdict of guilty would be serving the cause of truth here, Judge, is the way I understood it.

MR. DOUGHERTY: It was prefaced with, "if you have had after careful deliberation."

MR. NEWMAN: But he said, serving the cause of truth, which is calling the community to assist him in effect, and calling up the community emotions, and I respectfully except to all that.

Based on all of them, I ask for a mistrial.

THE COURT: Your motion is denied. I think
they are completely without substance.

MR. LICHT: I join in the application and

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each and every objection by co-counsel, Mr. Newman.

THE COURT: Your motion is denied. I will say this, and I will point out at the end of the trial some one or two comments that I have with respect to conduct on the other side, I will not point it out at this point, but I did make notes of it as I went along. I do not think that the prosecutor overstepped the bounds in his summation.

MR. CHREIN: If I may call one further part of the summation to your Honor's attention, during the course of the government's summation, he said that where else would Mr. Norman get bills except from a person like Mr. Daniels.

Mr. Daniels' character was not brought into evidence, Mr. Daniels didn't take the stand, and we don't know from any part of the record what sort of person Mr. Daniels is. I may take exception to that and join in Mr. Newman's motion based on this argument, based on that point.

MR. DOUGHERTY: I think that statement was made in the context of my description of Mr. Daniels' business, his -- of Mr. Norman's business, his livelihood, his servicing machines in bars and meeting bartenders.

THE COURT: I don't think there was anything

unfair about any of the comments that I heard. MR. NEWMAN: 10:00 o'clock tomorrow? THE COURT: 10:00 o'clock tomorrow. (Case continued to November 13, 1974, at 10:00 a.m.) ó 

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(Whereupon, the jury entered the courtroom.)

THE COURT: Is there any reason why we shouldn's proceed with the charge?

MR. TAVOULARIS: No reason on behalf of the defendant Tavoularis, your Honor.

MR. CHREIN: None, your Honor.

THE COURT: All right.

Now, ladies and gentlemen of the jury, this is going to take a little while and it's going to require a considerable amount of attention on your part for two reasons:

One, because it is a little long; and two,
because in order to minimize any possibility of error,
I think it's wise to read the charge on the law,
which will require extra attention on your part. And
I apologize to you because while I feel it is necessary -- and I will try to read slowly and clearly so
you can follow it.

After you retire to the jury room, if you feel that you want any portion of it read back, you can, of course, have any portion read back that you wish.

Now that you have heard the evidence and the argument, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other considerations not founded on evidence and these instructions on the law.

Justice through trial by jury must always

depend upon the willingness of individual juror
each

to seek the truth as to the facts from the same

evidence presented to all the jurors; and to arrive at

a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "not guilty" pleas of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice or public opinion. Both of the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

I am not sending the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled, however, to see any or all of the exhibits as you consider your verdict. I suggest that you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note to me through one of the Deputy Marshals.

The law presumes the defendants to be innocent of crime. Thus, a defendant, although accused, begins the trial with a "clean slate" -- with no evidence

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against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon the defendants in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from a natural sympathy which we all have for others. It is not necessary for the Government to prove the guilt of the defendants beyond all possible doubt. Because if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any contraverted

fact which, by its nature, is not susceptible of mathematical certainty. In consequence, the law says that a doubt should be a reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or ∞njecture.

Again, a reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime.

One is direct evidence -- such as the testimony of an eye-witness. The other is circumstantial evidence -- the proof of facts and circumstances which rationally

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implied the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind. Thus, the footprints of a man in the sand implied to Robinson Crusce that there was another man with him on the desert island, and indeed there was, the man Friday. Thus, on the one hand you may have direct evidence of the issue and on the other hand you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt both on the direct and circumstantial evidence.

At times the jury might feel that circumstantial evidence is of better quality. At other times they may feel direct evidence is of better quality. That judgment is left entirely to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Now, on the indictment, it is charged in Count

One of the indictment -- and I am going to read the

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entire indictment to you and discuss the individual counts separately.

It is charged in Count One of the indictment that on or about and between the 14th day of October 1969 and the 4th day of March 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis daniels, and one Joseph DiRienzo, Stuart Norman and Melvin Berman, named herein as co-conspirators but not as defendants, and others to the Grand Jury unknown, wilfully and knowingly conspired and agreed to commit offenses against the United States in violation of Title 18, United States Code, Section 2113(c), by wilfully and knowingly conspiring and agreeing to possess, conceal, sell and dispose of United States Treasury bills, valued in excess of \$100, including but not limited to a United States Treasury bill in the face amount of \$100,000, bearing serial number 1017965A which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in

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the care, custody, control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels, knowing the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113(b).

It was a part of said conspiracy that the defendant Vincent Poerio and the defendant Louis

Daniels would offer to sell Treasury bills valued in excess of two million dollars to co-conspirators Stuart Norman and Melvin Berman.

It was further a part of said conspiracy that co-conspirator Stuart Norman and Melvin Berman would attempt to sell said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DiRienzo.

It was further a part of said conspiracy that the defendant Anthony Tavoularis and co-conspirate.

Joseph DiRienzo would attempt to find a buyer for said Treasury bills.

It was further a part of said conspiracy that the defendant Vincent Poerio would supply a sample Treasury bill to co-conspirator Stuast Norman.

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It was further a part of said conspiracy that said sample Treasury bill would be passed from co-conspirator Stuart Norman through co-conspirator Melvin Berman to the defendant Anthony Tavoularis.

It was further a part of said conspiracy that the defendant Anthony Tavoularis would deliver said sample Treasury bill to co-conspirator Joseph DiRienzo.

It was further a part of said conspiracy that the defendant Vincent Poerio would deliver Treasury bills valued in excess of two million dollars to co-conspirator Stuart Norman.

It was further a part of said conspiracy that co-conspirator Stuart Norman would deliver said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DiRienzo at Frank's Luncheonette, 1766 East New York Avenue, Brooklyn, New York.

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed the following overt acts:

One. On or about February 27, 1970, in the Eastern District of New York, the defendant Anthony Tavoularis and Joseph DiRienzo had a conversation.

Two. On or about February 28, 1970, within the

Eastern District of New York, Anthony Tavoularis and Joseph DiRienzo met at 1766 East New York Avenue, in Brooklyn.

Three. On or about February 28, 1970, within the Eastern District of New York, Vincent Poerio and Stuart Norman had a meeting.

Four. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis, Melvin Berman and Stuart Norman had a meeting.

Five. On or about March 4, 1970, within the Eastern District of New York, Vincent Poerio and Stuart Norman had a meeting.

Six. On or about March 4, 1970, within the Eastern District of New York, Anthony Tavoularis, Stuart Norman and Joseph DiRienzo met at 1766 East New York Avenue, in Brooklyn.

All in violation of Title 18, United States
Code Section 371.

Now, there are three different provisions of the statute which are referred to in that portion of the indictment. The last one is Title 18, United States Code, Section 371. The prior references were Title 18, United States Code, Section 2113(b) and 2113(c).

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I am going to hold the reading of 2113(b) and 2113(c) until I get to the substantive count, which is Count Two of the indictment and will read those sections to you and explain it to you briefly. At the moment I will just read to you Title 13, United States Code, Section 371, which is the conspiracy section of the Code.

It provides. If two or more persons conspire to commit any offense against the United States and one or more of such persons does any act to effect the objects of the conspiracy, each is guilty of an offense against the United States.

Four essential elements are required to be proved in order to establish the offense of conspiracy charged in the indictment:

One, that the conspiracy described in the indictment was wilfully formed and was existing at or about the time alleged;

Two, that the accused wilfully became a member or members of the conspiracy;

Three, that one of the conspirators thereafter, knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged; and

Four, that such overt act was knowingly done in furtherance of some object or purpose of the conspiracy as charged.

(Continued on next page.)

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JB:jm TlamR2 Charge of the Court

doubt from the evidence of the case the existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete, and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

As stated before, the burden is always on the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Now, what is a conspiracy?

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose. So, a conspiracy is a kind of partnership in criminal purposes, in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard the law.

Mere similarity of conduct among various persons,

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Charge of the Court

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and may have assembled together and discussed common

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aims and interests, does not necessarily establish

and the fact they may have associated with each other,

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proof of the existence of a conspiracy.

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that the members entered into any express or formal

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agreement, or that they directly, by words spoken or

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in writing, stated between themselves what their object

However, the evidence in the case need not show

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or purpose was to be, or the details thereof, or the

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means by which the object or purpose was to be

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accomplished.

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What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon were actually used or put into operation; nor that all of the persons charged to have been members of the alleged conspiracy were such. What the evidence in the

case must establish beyond a reasonable doubt is
that the alleged conspiracy was knowingly formed, and
that one or more of the means or methods described in
the indictment were agreed upon to be used, in an
effort to affect or accomplish some object or purpose
of the conspiracy, as charged in the indictment; and
that two or more persons including one or more of the
accused, were knowingly members of the conspiracy, as
charged in the indictment.

In your consideration of the evidence in the case as to the offense of conspiracy charge, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not each of the accused willfully became a member of the conspiracy.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was willfully formed, and that a defendant lawfully became a member of the conspiracy either at its inception or afterwards, and that thereafter one or more of the conspirators committed one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a

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conviction even though the conspirators may not have succeeded in accomplishing their common object or purpose and in fact may have failed so doing.

The extent of any defendant's participation,
moreover, is not determinative of his guilt or
innocence. A defendant may be convicted as a
conspirator even though he may have played only a minor
part in the conspiracy.

An overt act is any act knowingly committed by one of the conspirators, in an effort to affect or accomplish some object or purpose of the conspiracy.

The overt act need not be criminal in nature, if considered separately and apart from the conspiracy.

It may be as innocent as the act of a man walking across the street, or driving an automobile, using a telephone.

It must, however, be an act which follows and tends toward accomplishment of the plan or scheme. It must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

Again, it is not necessary that all of the overtacts charged in the indictment were performed. One overtact is sufficient.

One may become a member of the conspiracy without full knowledge of all the details of the

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Charge of the Court

conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find the defendants or any other person have become a member of the conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendants or other person who are claimed to have been members, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily or intentionally and with specific intent to do something the law forbids. That is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encourages advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant, a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as

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# Charge of the Court

if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and declarations of all the alleged participants. However, in determining whether a particular defendant was a member of a conspiracy, if any, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of the its members.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

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### Charge of the Court

Otherwise, any admission or incriminatory statement made or act done outside of court, by one person, may not be considered as evidence against any person who is not present and did not hear the statement made, or see the act done.

Thereafter, statements of any conspirator,
which are not in furtherance of the conspiracy, or made
before its existence, or after its termination, may be
considered as evidence only against the person making
it.

Now, the dates of the formation and the termination of the conspiracy are the dates referred to in the indictment. That is, on or about and between October 14, 1969 and the 4th day of March, 1970

Persons can be involved in a conspiracy even though they do not know all other members of the conspiracy or participate in each phase of the conspiracy. If there is knowledge by the defendant that he is a participant in a general plan to violate the law, such person may be regarded as an accredited member of the conspiracy.

It is not necessary that each conspirator
join the conspiracy at its inception. One who joins
an existing conspiracy takes it as it is, and is

Charge of the Court

accountable for the prior conduct of the co-conspirators done in furtherance of the conspiracy.

Moreover, he is liable for the acts of his co-conspirators though he was not aware of the performance of those acts, nor even of the existence of the actors.

A co-conspirator who joins the conspiracy after its inception adopts all prior actions done in furtherance of the conspiracy, including declarations of other co-conspirators.

The indictment charges a conspiracy among the defendants Tavoularis, Poerio and Daniels, and Messrs. DiRienzo, Norman and Berman, all of whom are named in the indictment as co-conspirators. A person cannot conspire with himself, and, therefore, you cannot find any of the defendants guilty unless you find beyond a reasonable doubt that he participated in the conspiracy as charged with at least one other person. With this qualification you may find all of the defendants guilty or some of the defendants guilty and some not guilty, or all not guilty, all in accordance with these instructions and the facts which you find.

It is charged in Count Two of the indictment

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Charge of the Court

that on or about and between the 27th day of February, 1970 and 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio and the defendant Louis Daniels, did willfully, unlawfully and knowingly possess United States Treasury bills, valued in excess of one hundred dollars, including but not limited to a United States Treasury bill in the face amount of one hundred thousand dollars bearing serial number 10179653 which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody and control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis and the defendant Vincent Poerio and the defendant Louis Daniels, knowing that the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113 (b).

All in violation of Title 18, U.S. Code,

Section 2113 (c) and Title 18, U.S. Code, Section 2.

Now, I told you I would read you Title 18,
2113 (c) and Title 18, 2113 (b). The first of them,
Title 18, U.S. Code, Section 2113 (c) provides in
pertinent part: That whoever receives, possesses,
conceals, stores, barters, sells or disposes of any
property or money or thing of value, knowing the same
to have been taken from a bank, in violation of
Sub-section B of this Section, shall be in violation
of the law.

Now, Subsection B, which is referred to in the indicate ment and in the section which I just read, and which describes what is meant by the phrase "taken from a bank" and Subsection C, reads:

Whoever takes and carries away with intent to steal or purloin any property or money or any other thing of value exceeding one hundred dollars, belonging to or in the care, custody and control and management or possession of any bank, shall be in violation of the law.

Now, the essential elements of the crime charged in Count Two of the indictment -- and I ask you to listen to these carefully -- are as follows:

One, that the defendants possessed United States Treasury bills.

	. 1	-	Two, that such United States Treasury bills								
	2		exceeded in value one hundred dollars.								
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That such possession was done knowingly and intentionally.

- 4. That the United States Treasury bill or bills had been taken and carried away with intent to steal or purloin from the care, custody, control and management of a bank, and
- 5. That at the time of possession, the defendants knew that such property or money or other thing in value had been so taken from a bank.
- 6. At the time the bills were stolen, they were in the care, custody and control and management of the Morgan Guaranty Trust Company of New York.

The final element, that said bank must have been a member of the Federal Deposit Insurance Corporation has been stipulated or agreed to by the parties.

The burden is always upon the prosecution to prove beyond reasonable doubt every essential element of the crime charged.

As to the fourth and fifth elements of the crime, it is not necessary for you to find that the defendants participated in the taking away or theft in any way, or that they knew that the person from whom they received the bills had participated in the theft. It is also unnecessary for you to find that these defendants, or any

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person from whom they received the bills, knew the particular bank from which the money was taken, or whether it was a bank insured by the Federal Deposit Insurance Corporation.

Circumstantial evidence may be sufficient to prove that the defendants knew that the bills were stole from a bank.

It is not necessary that the Government prove the bills were property of or belonging to Morgan Guaranty.

The Government must only prove that the bills were in the care, custody, control or management of the said bank at the time of their taking.

As used in the criminal statute in this case, the term bank means any member of the Federal Reserve System, any bank, banking association, trust company, savings bank, or any banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation. As I have instructed you, the deposits of the Morgan Guaranty Trust, New York City, a company, were so insured in October, 1969, and continue to be so insured.

Possession of the fruits of crime, recently after its commission, justifies the inference that the posses-

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sion is guilty possession, and though only prima facie evidence of guilt, may be of controlling weight unless explained by the circumstances, or accounted for in some way consistent with innocence.

During the course of this trial you have heard testimony by Government witnesses concerning the identification of the defendants. There is no rule of law, however, that requires an identification to be positive beyond any shadow of doubt. The sufficiency of identification is for you, the jury.

Testimony by a witness that a defendant resembles or looks like the person the witness observed may be sufficient when considered with other evidence.

But, like everything else, it must be proved to your satisfaction beyond a reasonable doubt.

Now, you heard a reference at the end of Title 18, the Second Count of the Indictment, Title 18, United States Code, Section 2. That is the so-called aiding and abetting section of the statute, and it applies to Count Two of the Indictment, and I will read it to you:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which

is directly performed by him or another would be an offense against the United States, is punishable as a principal.

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

In other words, every person who willfully participates in the commission of a crime may be found guilty of that offense. Participation is willful is done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to further do something the law requires to be done; that is to say, with bad purpose, either to disobey or to disregard the law.

In order to aid and abet another to commit acrime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it, as he would in something he wishes to bring about; that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is willfully done if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the

specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

Mere presence at the scene of the crime, and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant, and not merely a knowing spectator.

An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident, or other innocent reason.

The purpose of adding the word k owingly was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

As stated before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt before there can be a convic-

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An act is done willfully if done voluntarily and intentionally, and with the specific intent to do something the law forbids, that is to say, with bad purpose either to disobey or to disregard the law.

Knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant, and all other facts and circumstances in evidence, which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Now, on the question of possession, the law recognizes two kinds of possession: Actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then

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in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stiput lation of fact. When the attorneys on both sides stiput late or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as approved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take a judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so, since you are the sole judge of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the Sworn testimony of the witnesses, regardless of who may have called them; and all Exhibits received in evidence, regardless of who may have produced them, and all facts which may have been

admitted or stipulated; and all facts and events which may have been judicially noticed; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross-examination, as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case, and your verdict is to be based on the evidence only.

But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find have been proved, such reasonable inferences as you seel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt, and inconsistent with every reasonable hypothesis of innocence, or that there must be no reasonable doubt as to each chain of proof. The drawing of inferences is the proper function of you, the jury. The process of drawing inferences is to be drawn by human experience. The jury is not limited to drawing only those inferences most favorable to the accused, but must weight the inferences both favorable and unfavorable of the accused, to see if the evidence points to the guilt or innocence, bearing in mind only that the Government has the burden of proving a defendant's guilt beyond a reasonable doubt on your consideration of all of the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

You will note that the indictment charges that the offenses were charged on or about certain dates. The Government need not prove with certainty the exact date of the alleged offenses. It is sufficient that the evidence in the case establish beyond a reasonable doubt that the offenses were committed on dates reason-

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ably near the dates alleged.

Evidence relating to any statement or act or omission claimed to have been made or done by a defendant outside of court, and after a crime has been committed should always be considered with caution, and weighed with great care, and all such evidence should be disregarded entirely unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement, act or omission was knowingly made or done.

A statement or act or omission is knowingly made or done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties, or where the witness' testimony would be merely cumulative.

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

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You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witnesshas testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witnesses' ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters.

Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction

may see or hear it differently; and innocent misrecollection, like failure of recollection, is
not an uncommon experience. In weighing the
effect of a discrepancy, always consider whether
it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results
from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest or by prejudice against a defendant.

An accomplice is one who unites with another person in the commission of a crime voluntarily and with common intent.

An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an

accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon
the unsupported testimony of an alleged accomplice
unless you believe that unsupported testimony beyond
a reasonable doubt.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars; and you may reject all the testimony of that witness or give it such

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credibility as you may think it deserves.

or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses. Witnesses who, by education and experience, have become

expert in some art, science, profession or calling, may state their opinions as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the olinion.

You should consider the fingerprint expert's opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that opinion of the expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

It is the duty of the attorneys on each side of the case to object when the other side offers testimony or whether evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence
to be introduced over the objection of an attorney.
the Court does not, unless ex!ressly stated, indicate any opinion as to the weight or effect of
such evidence. As stated before, the jurors are

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the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any queation.

You are here to determine the guilt or innocence of the accused from the evidence in the case.

You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So if the evidence in the case convinces you beyond reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgment of each jurcr. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with

one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon returning to the jury room, the juror

Charge of the Court 1091 2 closest to my left here, being Juror No. 1, will act 3 as your foreman unlass that juror is of the mind not to do so, and you will select one of your members to act as your foreman. The foreman will preside over your deliberations, and will be your spokesman here in court. 8 Remember at all times you are not partisans. 9 You are judges -- judges of the facts. Your sole 10 interest is to seek the truth from the evidence in 11 the case. 12 You are expected to use your good sense, 13 consider the evidence in the case for only those 14 purposes for which it has been admitted, and give 15 it a reasonable and fair construction in the light 16 of your common knowledge and your natural tendencies 17 and inclinations. 18 You must render a verdict with respect to 19 each of the two counts of the indictment and you 20 must render a verdict with respect to each of the 21 defendants. 22 It is your duty to give separate and per-23 sonal consideration in the case of each individual 24 defendant. 25 When you do so, you should analyze what the

evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined from the evidence as to his own acts and conduct and any other evidence in the case which may be applicable to him.

tions to communicate with the Court, you may send a note by a Deputy Marshal signed by your forelady or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other then a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally in open court.

You will note from the oath about to be taken by the Deputy Marshals that they, too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to

Charge of the Court 1 1033 reveal to any person - not even to the Court - how 2 the jury stands, numerically or otherwise, on the 3 question of the guilt or innocence of the accused, until after you have reached a unanimous verdict. Now, ladies and gentlemen, that is the charge 6 7 on the law. What I am going to do is ask you to step in 8 the other room for about five or ten minutes while 9 I discuss one or two points with counsel in the case. 10 I instruct you not to start your deliberations 11 until after I have asked you to come back and have 12 given you your final go ahead. 13 I realize at this point you are very anxious 14 to go ahead and start deliberating, but wait five or 15 ten minutes until I have had a chance to discuss 16 17 matters with counsel. I will call you back shortly. 18 The Deputy Marshals will be sworn and the 19 alternate jurors will be discharged and the twelve 20 of you will be sitting in the box and you will 21

the case in the meanwhile.

The jury withdrew from the courtroom at 11:05a.m.)

begin your deliberations then, but do not discuss

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(The following out of the hearing of the jury:)

THE COURT: All right, Mr. Dougherty.

MR. DOUGHERTY: I am satisfied with the charge, your Honor. I have no comment on it.

MR. NEWMAN: If your Honor pleases, with your permission may I make exceptions first?

THE COURT: In any order that you wish.

MR. NEWMAN: I have two exceptions to the charge and I would also like permission rather than restating after my co-counsel, to join in their exceptions.

My two exceptions are: I object to that part of the charge on the part of the defendant Tavoularis to the use of recent possession and presumption of recent possession based on the arguments previously presented to the Court on the motion to dismiss and on the end of the Government's case.

THE COURT: I understand.

MR. NEWMAN: I also obect to that portion of the charge wherein your Honor was talking about prio contradictory statements and you indicated they may not be established, may not be used to establish the

to call any witnesses. I don't know of any failure

MR. CHREIN: If any comment was made by my colleagues, I will withdraw the objection. But it is my own recollection, which doesn't necessarily govern, that no such comment was made.

MR. NEWMAN: Since my colleague is abandoning me so quickly, your Honor, may the record indicate that as far as I was concerned, I made no such comment except in the format of exlert witnesses having to do with the tape, or to rebut witnesses that I lut on the stand. That's my recollection of how I used it. And, therefore, I would join in Mr. Chrein's and Mr. Light's objections and exceptions.

THE COURT: You already have.

All right. I will give these three clarifications that I indicated I would.

Will you bring back the jury.

(Whereupon the jury entered the courtroom.)

THE COURT: Now, ladies and gentlemen of the jury, I have been asked to make one or two clarifications, which I will do.

I gave you an instruction with respect to the use of earlier contradictory statements, which I believe were read. The earlier contradictory state-

ments are admissible only to impeach the credibility of the witness and not to establish the truth of those statements. That is true in cases where the earlier contradictory statements are read to a witness, for example, in cross-examination and saying, "Do you recall having said that?"

Defense counsel pointed out that in their case they read a few statements which they claim contradicted one or more witnesses to you in the course of their presentation of their case. That rule does not apply to those statements. They may be used by you to establish the truth of those statements as distinguished from statements read on cross-examination.

The second clarification is, I said that

I would not send the exhibits in with you initially when you begin your deliberations. But as

I indicated in the charge, you may have any or all of them as you wish and request them. The same is true as indicated to you by counsel in their summation. You may have any portion of any witness's testimony read to you — reread, if you wish to have it reread, and you may have the tape, if you wish, replayed to you here in the courtroom. of you

wish to have it done.

If you do wish any of those, you should prepare a little note through your foreman and send it to me through one of the Deputy Marshals.

The third question is, I was asked to clarify that the conspirary - the elements of the conspiracy - there is some question as to whether you understand that the conspirary must be in violation of Section 2113, either (c) and (b), as I read them to you.

In other words, the conspiracy must have been formed for an unlawful purpose and must have been formed for the purpose of violating those sections of the code as is charged in the indictment.

I am sure you understand that. But I said

I would repeat it to you to make sure you do understand.

All right, now, the four alternates are discharged with the thanks of the Court. And your patience and attention to the facts here over these many days - and it is a very valuable service that you perform - and, indeed, in the last three or four cases that have been tried in this courtroom, we had to use one, if out two, of the alternates

very healthy and in good spirits and have survived 3 the rigors of the ordeal. So you are discharged 4 with the thanks of the Court. You may go back to 5 the central jury room. 6 THE CLERK: Take the cards downstairs and 7 please lick u! your things. 8 (The four alternate jurors were discharged.) 9 10 THE COURT: Now, will you swear in the marshals. 11 THE CLERK: Yes. Will the marshals step 12 13 forward, please. (Two Deputy Marshals were sworn by the Clerk 14 15 of the Court.) THE COURT: Now, ladies and gentlemen, before 16 the marshals take you out, it is now 11:15. One 17 18 of the things -- when it gets to about twelve 19 o'clock -- that you should determine is whether 20 you wish to go out for lunch or whether you wish 21 to have lunch sent in. 22 If you wish to have lunch sent in, you should tell the Deputy Marshal, or if you wish to go out, 23 24 you must tell the Deputy Marshal. If you want 25 lunch sent in, he will take the order from you

Charge of the Court

this case, for some reason your fellow jurors are

1

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1072

JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

UNITED	STATES OF AMERICA	A, )				
	v.	{	No.	74	CR	173
ANTHONY	TAVOULARIS.	5				

On this 17th day of January, 1975 came the attorney for the government and the defendant appeared in person with counsel.

IT IS ADJUDGED that the defendant upon a verdict of guilty has been convicted of the offense of violating T-18, U.S.C., Secs. 371, 2113(b), 2113(c) and 2, in that on or about and between October 14, 1969, and March 4, 1970 and on or about and between February 27, 1970 and March 4, 1970, all dates being approximate and inclusive, the defendant with others, wilfully and knowingly conspired to possess, conceal, sell and dispose, and did wilfully, unlawfully, knowingly possess U.S. Treasury Bills, valued in excess of \$100.00, which U.S. Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust

Co., while the aforesaid U.S. Treasury bills, were in the care, custody, control and management of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant knowing the aforesaid Treasury bills had been taken from a bank, as charged in Counts 1 and 2, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years on count 1, and that the defendant shall become eligible for parole under 18 USCA §4208\*a)(2) at such time as the Board of Parole may determine, and further that the defendant is fined the sume of \$5,000.00.

IT IS ADJUDGED on count 2 of the Indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for

for a term of 5 years and that the defendant shall become eligible for parole under 18 USCA §4208(a)(2) at such time as the Board of Parole may determine, and further that the defendant is fined the sum of \$5,000.00; such sentence of imprisonment on count 2 to be served concurrently with the sentence imposed under count 1 of the indictment.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Thomas C. Platt
United States District Judge

#### NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA,

-against-

No. 74 CR 173

ANTHONY TAVOULARIS, et al.,

Defendants.
SIRS:

TAVOULARIS hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Thomas C. Platt on January 17, 1975, where the defendant was sentenced to five years imprisonment on count one and a fine of \$5,000 and five years imprisonment and \$5,000 fine on count two, the imprisonment to run concurrently.

DATED: NEW YORK, NEW YORK January 17, 1975

TO:
HON. DAVID TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Yours, etc.

GUSTAVE H. NEWMAN Attorney for TAVOULARIS 522 Fifth Avenue New York, New York 10036 (212) MU 2-4066

Anthony Tavoularis 133-35 88 Street Ozone Park, New York IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 75-1027

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ANTHONY TAVOULARIS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

#### APPELLANT'S APPENDIX

GUSTAVE H. NEWMAN
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Received 2 copies of appellants appendit Carry Donadio 3/10/75